

# **भारत का राजपत्र** **The Gazette of India**

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

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 No. 11] NEW DELHI, SATURDAY, MARCH 18, 1967/PHALGUNA 27, 1888

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके ।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

नोटिस

NOTICE

नीचे लिखे भारत के असाधारण राजपत्र 8 मार्च, 1967 तक प्रकाशित किये गये ।

The undermentioned Gazettes of India Extraordinary were published upto the 8th March 1967 :—

Issue No.	No. and Date	Issued by	Subject
110	S.O. 691, dated 27th February, 1967.	Ministry of Commerce	Further amendments to the Exports (Control) Order, 1962.
111	S.O. 692, dated 28th February, 1967.	Ministry of Finance	Appointment of 1st March, 1967 as the date on which rules 5, 9 and 10 of the Defence of India (Fourth Amendment) Rules, 1966, shall come into force.
	S.O. 693, dated 28th February, 1967.	Do.	Specifying the conditions, limitations and restrictions under which gold shall be received, melted, assayed, alloyed, refined or subjected to any other process by a refiner.
	S.O. 694, dated 28th February 1967.	Do.	Record of gold recovered.

Issue No.	No. and Date	Issued by	Subject
	S.O. 695, dated 28th February, 1967.	Ministry of Finance	Specifications of standard gold bars
	S.O. 696, dated 28th February, 1967.	Do.	The process of refining gold and the process of refining silver.
	S.O. 697, dated 28th February, 1967.	Do.	Specifying the manner in which and the conditions subject to which every sale or delivery of primary gold shall be made.
112	S.O. 762, dated 1st March 1967.	Ministry of Information and Broadcasting.	Approval of the films as specified therein.
113	S.O. 763, dated 1st March, 1967.	Ministry of Finance	Appointment of Shri Jasjit Singh, Joint Secy. as Administrator of Gold Control.
114	S.O. 764, dated 3rd March, 1967.	Ministry of Education	The International Copyright (First Amendment) Order, 1967.
	प.सं. आ. 765 दिनांक 3 मार्च, 1967	शिक्षा मंत्रालय	अन्तर्राष्ट्रीय प्रतिलिप्याधिकार (प्रथम संशोधन) आदेश, 1967.
115	S.O. 766, dated 3rd March, 1967.	Ministry of Law	Declarations containing the names of the candidates elected in the constituencies referred to therein for the House of the People.
116	S.O. 767, dated 4th March, 1967.	Election Commission, India.	Names of the members who have been declared elected for the various parliamentary constituencies.
117	S.O. 768, dated 4th March, 1967.	Ministry of Home Affairs.	Directions in respect of the Mandi-Kulu Road Transport Corporation.
	S. O. 769, dated 4th March, 1967.	Do.	Directions in respect of the Pepsu Road Transport Corporation.
118	S. O. 770, dated 4th March, 1967.	Ministry of Commerce	Further amendment to the Exports (Control) Order, 1962.
119	S. O. 831, dated 7th March, 1967.	Ministry of Railways	Appointment of Shri P. G. Karnik, District and Sessions Judge, Dhulia as Railway Claims Commissioner.
120	S. O. 832, dated 8th March, 1967.	Ministry of Commerce	Recognition of the proposals as specified therein for the Minerals and Ores.

Issue No.	No. and Date	Issued by	Subject
121	S. O. 833, dated 8th March, 1967.	Election Commission, India.	Amendments in the notification No. 464/HP/HP/67, dated 13th January, 1967.

ऊपर लिखे असाधारण गजटों की प्रतियां प्रकाशन प्रबन्धक, सिविल लाइन्स, दिल्ली के नाम मांगपत्र भेजने पर भेज दी जाएंगी। मांगपत्र प्रबन्धक के पास इन राजपत्रों के जारी होने की तारीख से 10 दिन के भीतर पहुंच जाने चाहिए।

Copies of the Gazettes Extraordinary mentioned above will be supplied on indent to the Manager of Publications, Civil Lines, Delhi. Indents should be submitted so as to reach the Manager within ten days of the date of issue of these Gazettes.

## भाग II—खण्ड 3—उपखण्ड (ii)

### PART II—Section 3—Sub-section (ii)

(रक्षा मंत्रालय को छोड़कर) भारत सरकार के मंत्रालयों और (संघ क्षेत्र प्रशासन को छोड़कर) केन्द्रीय प्राधिकरणों द्वारा जारी किए गए विधिक आदेश और अधिसूचनाएं।

Statutory orders and notifications issued by the Ministries of the Government of India (other than the Ministry of Defence) and by Central Authorities (other than the Administration of Union Territories).

## ELECTION COMMISSION, INDIA

*New Delhi, the 7th March 1967*

S.O. 857.—The Election Commission's notification No. 154/14/67, dated the 2nd March, 1967, is hereby cancelled.

[No. 154/14/67.]

*New Delhi, the 8th March 1967*

S.O. 858.—In exercise of the powers conferred by sub-section (1) of section 13A of the Representation of the People Act, 1950 (43 of 1950), the Election Commission, in consultation with the Government of Uttar Pradesh hereby nominates Shri Gur Sharan Lal Srivastava as the Chief Electoral Officer for the State of Uttar Pradesh with effect from the date he takes over charge and until further orders vice Shri Jagmohan Lal Sinha.

[No. 154/13/67.]

By Order.

K. S. RAJAGOPALAN, Secy.

## MINISTRY OF FINANCE

(Department of Economic Affairs)

*New Delhi, the 6th March 1967*

S.O. 859.—In exercise of the powers conferred upon it by clause (c) of section 10 of the Agricultural Refinance Corporation Act, 1963 (10 of 1963), the Central Government hereby appoints Shri P.P.I. Valdyanathan, Additional Secretary, Ministry of Food, Agriculture, Community Development and Cooperation (Department of Cooperation) as a director of the Board of the Agricultural Refinance Corporation vice Shri S. Chakravarti.

[No. F.14/1/67-SB.]

New Delhi, the 8th March 1967

S.O. 840—Statement of the Affairs of the Reserve Bank of India as on the 3rd March, 1967

## BANKING DEPARTMENT

LIABILITIES	Rs.	ASSETS	Rs.
Capital Paid up	5,07,00,000	Notes	8,28,19,000
		Rupee Coin	4,50,000
Reserve Fund	80,00,00,000	Small Coin	2,88,00 <sup>0</sup>
National Agricultural Credit (Long Term Operations) Fund	115,00,00,000	Bills Purchased and Discounted :—	
		(a) Internal	..
		(b) External	..
National Agricultural Credit (Stabilisation) Fund	16,00,00,000	(c) Government Treasury Bills	1,80,84,53,000
		Balances Held Abroad*	33,80,20,000
National Industrial Credit (Long Term Operations) Fund	20,00,00,000	Investments**	209,20,20,000
		Loans and Advances to —	
		(i) Central Government	..
		(ii) State Governments @	82,56,57,000



Deposits :—		Loans and advances to :—	
(a) Government—		(i) Scheduled Commercial Banks† . . . . .	122,97,49,000
		(ii) State Co-operative Banks†† . . . . .	164,14,21,000
		(iii) Others . . . . .	1,68,80,000
(i) Central Government . . . . .	99,80,43,000	Loans, Advances and Investments from National Agricultural Credit (Long Term Operations) Fund—	
(ii) State Governments . . . . .		(a) Loans and Advances to :—	
		(i) State Governments . . . . .	28,57,40,000
		(ii) State Co-operative Banks . . . . .	12,49,32,000
		(iii) Central Land Mortgage Banks . . . . .	
		(b) Investment in Central Land Mortgage Bank Debentures . . . . .	7,11,93,000
(b) Banks—		Loans and Advances from National Agricultural Credit (Stabilisation) Fund—	
(i) Scheduled Commercial Banks . . . . .	115,87,47,000	Loans and Advances to State Co-operative Banks . . . . .	
(ii) Scheduled State Co-operative Banks . . . . .	5,00,15,000		
(iii) Non-Scheduled State Co-operative Banks . . . . .	52,15,000	Loans, Advances and Investments from National Industrial Credit (Long Term Operations) Fund—	
(iv) Other Banks . . . . .	5,16,000	(a) Loans and Advances to the Development Bank . . . . .	5,17,90,000
(c) Others . . . . .	275,36,32,000	(b) Investment in bonds/debentures issued by the Development Bank . . . . .	..
Bills Payable . . . . .	35,84,42,000	Other Assets . . . . .	
Other Liabilities . . . . .	99,74,90,000		
Rupees . . . . .	895,78,95,000	Rupees . . . . .	895,78,95,000

\*Includes Cash and Short-term Securities.

\*\*Excluding Investments from the National Agricultural Credit (Long Term Operations) Fund and the National Industrial Credit (Long Term Operations) Fund.

@ Excluding Loans and Advances from the National Agricultural Credit (Long Term Operations) Fund, but including temporary overdrafts to State Governments.

†Includes Rs 61,02,39,000 advanced to Scheduled Commercial Banks against usance bills under Section 17(4)(c) of the R. B. I. Act.

††Excluding Loans and Advances from the National Agricultural Credit (Long Term Operations) Fund and the National Agricultural Credit (Stabilisation) Fund.

Dated the 8th day of March, 1967.

An account pursuant to the Reserve Bank of India Act, 1934, for the week ended the 3rd day of March, 1967

ISSUE DEPARTMENT

LIABILITIES	Rs.	Rs.	ASSETS	Rs.	Rs.
Notes held in the Banking Department	8,28,19,000		Gold, Coin and Bullion :—		
Notes in Circulation	3006,77,05,000		(a) Held in India	115,89,25,000	
Total Notes issued		3015,05,24,000	(b) Held outside India	..	
			Foreign Securities	186,42,01,000	
			TOTAL		302,31,26,000
			Rupee Coin		77,82,39,000
			Government of India Rupee Securities		2634,91,59,000
			Internal Bills of Exchange and other commercial paper		
TOTAL LIABILITIES		3015,05,24,000	TOTAL ASSETS		30,15,05,24,000

Dated the 8th day of March, 1967.

P. C. BHATTACHARYYA,  
Governor.

[No. F. 3(3)-BC/67.]

V. SWAMINATHAN, Under Secy.

**(Department of Economic Affairs)**

*New Delhi, the 7th March 1967*

**S.O. 861.**—In pursuance of clause (a) of Sub-Section (1) of section 10 of the Industrial Finance Corporation Act, 1948 (15 of 1948), the Central Government hereby appoints Shri N. D. Nangia, Executive Director, Reserve Bank of India as the Chairman of the Industrial Finance Corporation of India with effect from the date he takes over the charge from Shri S. S. Shiralkar.

[No. F. 2(9)-Corp/67.]

**M. K. VENKATACHALAM,**  
Director (Investments).

**(Department of Economic Affairs)**

*New Delhi, the 10th March 1967*

**S.O. 862.**—In exercise of the powers conferred by section 6 of the Indian Coinage Act, 1906 (3 of 1906), the Central Government hereby makes the following amendment in the notification of the Government of India in the Ministry of Finance (Department of Economic Affairs) No. S.O. 4039, dated the 28th December, 1966, published in the Gazette of India Extraordinary Part II—Section 3—Sub-section (ii), No. 446, dated the 30th December, 1966, namely:—

In the said notification, for the words in Hindi and figure “रुपये का बीसवां भाग 5 पैस” the following words in Hindi shall be substituted, namely:—  
“रुपये का बीसवां भाग: पान्च पैस”

[No. F. 1/48/65-Coin.]

**M. S. NANJUNDIAH,** Director.

**(Department of Revenue and Insurance)**

*New Delhi, the 6th March 1967*

**S.O. 863.**—The following draft of certain rules further to amend the Insurance Rules, 1939, which the Central Government proposes to make in exercise of the powers conferred by section 114 of the Insurance Act, 1938 (4 of 1938), is published as required by sub-section (1) of the said section for the information of all persons likely to be affected thereby; and notice is hereby given that the draft will be taken into consideration on or after the 11th April, 1967. Any objection or suggestion which may be received from any person with respect to the draft on or before the aforesaid date will be considered by the Central Government.

*Draft Rules*

1. These rules may be called the Insurance (Amendment) Rules, 1967.
2. In the Insurance Rules, 1939, in rule 2, in clause (v),—
  - (a) for the words “the Punjab,” the words “Haryana, Punjab,” shall be substituted; and
  - (b) for the words “Union territories of Delhi,” the words “Union territories of Chandigarh and Delhi” shall be substituted.

[No. 51(1)-INS. 1/67.]

**RAJ K. NIGAM,** Dy. Secy.

## (Department of Revenue and Insurance)

## INCOME-TAX ESTABLISHMENTS

*New Delhi, the 23rd February 1967*

**S.O. 864.**—In pursuance of clause (b) of sub-rule (ii) of rule 2 of the Appellate Tribunal Rules, 1946, the Central Government has been pleased to appoint the undermentioned officers as Authorised Representative/Junior Authorised Representative, Income-tax Appellate Tribunal, with effect from the date noted against them to appear, plead and act for any Income-tax authority who is a party to any proceedings before the Income-tax Appellate Tribunal:—

S. No. 1	Name of the officer 2	Appointed as 3	Date of apptt. 4
1.	Shri S. S. Kapur, Inspecting Assistant Commissioner of Income-tax, Delhi.	Authorised Representative, Income-tax Appellate Tribunal, New Delhi.	10-10-1966.
2.	Shri V. Satyanarayana Rao, Income-tax Officer, Class II, Hyderabad.	Junior Authorised Representative, Income-tax Appellate Tribunal, Hyderabad.	12-1-1967 (A.N.)

[No. 50.]

M. G. THOMAS, Under Secy.

## (Department of Revenue and Insurance)

## CUSTOMS

*New Delhi, the 18th March 1967*

**S.O. 865.**—In exercise of the powers conferred by sub-section (1) of section 4 of the Customs Act, 1962 (52 of 1962), the Central Government hereby appoints the Collector of Customs and Central Excise, Cochin to be the Collector of Customs for the Union Territory of Laccadive Aminidive Islands.

[No. 28/F. No. 14/13/65-LC.II.]

**S.O. 866.**—In exercise of the powers conferred by sub-section (1) of section 4 of the Customs Act, 1962 (52 of 1962), the Central Government hereby appoints the Assistant Collector of Central Excise, Kozhikode to be Assistant Collector of Customs for the Union Territory of Laccadive and Aminidive Islands.

[No. 29/F. No. 14/13/65-LC.II.]

M. S. SUBRAMANYAM, Under Secy.

## (Department of Revenue &amp; Insurance)

## CORRIGENDA

*New Delhi, the 3rd March 1967*

**S.O. 867.**—In the notification of Government of India in the Ministry of Finance (Department of Revenue and Insurance) No. S.O. 3800, dated the 3rd December, 1966, published at page 3415 of the Gazette of India, Part II—Section 3—Sub-section (ii), dated the 17th December, 1966, for “rule 33 of the Central Civil Services (Classification, Control and Appeal) Rules, 1955”, read “rule 34 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965.”

[No. F. 14/97/66-Ins./O&amp;M.]

**S.O. 868.**—In the notification of Government of India in the Ministry of Finance (Department of Revenue and Insurance) No. S.O. 3801, dated the 3rd December, 1966, published at page 3415 of the Gazette of India, Part II—Section 3—Sub-section (ii), dated the 17th December, 1966, for “rule 33 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965” read “rule 34 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965.”

[No. F. 14/97/66-Ins./O&amp;M.]

K. SARAVANA, Under Secy.

# MINISTRY OF COMMERCE

*New Delhi, the 8th March 1967*

**S.O. 869.**—The following draft rules further to amend the Coir Industry Rules, 1954, which the Central Government proposes to make, in exercise of the powers conferred by section 26 of the Coir Industry Act, 1953 (45 of 1953), are hereby published for general information, as required by sub-section (1) of the said section and notice is hereby given that the said draft will be taken into consideration on or after the 8th April, 1967.

Any objections or suggestions with respect to the said draft received from any person before the aforesaid date will be considered by the Central Government.

## *Draft Rules*

1. These rules may be called the Coir Industry (Amendment) Rules, 1967.

2. In the Coir Industry Rules, 1954, for the proviso to rule 17, the following proviso shall be substituted, namely—

“Provided that no loan other than a loan from the Central Government or any State Government shall be taken, which is repayable later than six months from the date of the loan”

[No. F. 22(22)/66-TEX.(E).]

A. G. V. SUBRAHMANIAM, Under Secy.

(Office of the Chief Controller of Imports and Exports)

## ORDERS

*New Delhi, the 17th February 1967*

**S.O. 870.**—In exercise of the powers conferred by clause 9 of the Import Control Order 1955, dated the 7th December 1955 as amended, the undersigned hereby cancels Customs copy of Licence No. G/DG/2100346/C/XX/17-18 dated 20th November 1963 for the import of spare parts for electrically driven pumping sets from West Germany valued at Rs. 46,577/- issued in favour of M/s Protos Engineering Co. Pvt. Ltd., Sixth Radial Road, Connaught Place, New Delhi. The licence was partly utilised leaving a balance of Rs. 24,802.72 P.

2. The reason for cancellation is that the Customs copy of the licence has been lost by the licensee, who has requested for issue of duplicate licence in lieu thereof.

[No. 124-P/Cont./63-64/LVI.]

*New Delhi, the 28th February 1967*

**S.O. 871.**—In exercise of the powers conferred by Clause 9 of the Imports Control Order 1965, dated the 7th December 1955, as amended from time to time, the undersigned hereby cancels the Customs Purposes Copy of Import Licence No. G/CC/2332271/N/YY/20/CH/19.20 dated the 15th March 1965 for the import of Electronic valve Mangnetron 6002 valued at Rs. 3,000/- issued in favour of M/s. Electronics Ltd., Connaught Place, New Delhi.

2. The reason for cancellation is that it has been lost/misplaced by the licensee, who has requested for the issue of duplicate licence in lieu thereof.

[No. 116-E/Cont./64-65/LVI.]

S. A. SESHAN,

Dy. Chief Controller of Imports & Exports.

(Office of the Chief Controller of Imports & Exports)

## ORDER

*New Delhi, the 23rd February 1967*

**S.O. 872.**—In exercise of the powers conferred by Clause 9 of the Import Control Order, 1955 dated 7th December, 1955 as amended, the undersigned hereby cancels the Customs and Exchange Control Purposes copies of the import licence No. P/CG/2048070/S/Yen2IV, Credit/TR/22/C/H/20/CG. IV, dated 15th March, 1966 for Rs. 4.57,000/- (Rupees four lakhs and fifty seven thousand only) issued to M/s. Victory Flask Co. Pvt. Ltd., 208, Lady Jamshedji Road, Bombay. The licence in question was not registered with any Customs House and remained unutilised.

The reason for the cancellation is that the Customs and Exchange Control copies of the licence had been lost/misplaced by the licensee who has requested for the issue of a duplicate licence in lieu thereof.

[No. CG.IV/35/82/63-64/1989.]

Y. J. DENNISON,

Dy. Chief Controller of Imports & Exports,  
for Chief Controller of Imports & Exports.

(Office of the Chief Controller of Imports & Exports)

#### ORDER

*New Delhi, the 7th March 1967*

S.O. 873.—Whereas Messrs Eastern Associates Co., New Delhi or any bank or any other person have not come forward furnishing sufficient cause against Notice No. RP/YUG/35/63-64/RM CELL/1198 dated 31st January 1967 proposing to cancel licence No. P/AD/2010338/C/YG/22/C/23 dated 24th August, 1966 for Rs. 34,45,848/- for import of Agriculture Crawler Tractors from Yugoslavia granted to said Messrs Eastern Associates Co., New Delhi by the C.C.I.&E., New Delhi, Government of India, in the Ministry of Commerce, in exercise of powers conferred by the clause 9 of the Import (Control) Order 1955, hereby cancel the licence No. P/AD/2010338/C/YG/22/C/H/23 dated 24th August 1966 for Rs. 34,45,848 issued to Messrs Eastern Associates Co., New Delhi.

[No. RP/YUG/35/63-64/RM. CELL/860.]

J. S. BEDI,

Jt. Chief Controller of Imports & Exports.

### MINISTRY OF MINES AND METALS

#### ERRATUM

*New Delhi, the 7th March 1967*

S.O. 874.—In the notification of the Government of India in the Ministry of Mines and Metals No. S.O. 235, dated the 6th January, 1967, published at pages 110 to 113 in Part II, Section 3, Sub-Section (1) of the Gazette of India, dated the 21st January, 1967:—

1. at page 110—

- (i) In line 17, for "rules" read "lands";
- (ii) In the penultimate line, for "Coal Control-Council House Street, Calcutta-I" read "Coal Controller, 1, Council House Street, Calcutta-1";

2. at page 111—

In line 25, for "fayramdanga" read "Jayramdanga".

[No. C2-24(5)/63.]

RAM SAHAY, Dy. Secy.

### CENTRAL WAREHOUSING CORPORATION

#### NOTICE

*New Delhi, the 27th February 1967*

S.O. 875.—In exercise of the powers conferred by Rule 13 of the Central Warehousing Corporation Rules, 1963, the names and addresses of the Directors duly

elected by the respective class of shareholders under clauses (d) and (f) of sub-section (1) of Section 7 of the Warehousing Corporations Act, 1962, to fill in the vacancies arising from 18th March, 1967, are notified below:—

<i>Class of shareholder ...</i>	<i>Name of the Director</i>
1. Scheduled Banks (Other than State Bank)	Shri Somesh Chandra Trikha, General Manager, Punjab National Bank Ltd., Parliament Street, New Delhi-1.
2. Insurance Companies, Investment Trusts and other financial institutions, recognised associations and companies dealing in agricultural produce or notified commodities.	Shri S. D. Srinivasan, Managing Director, Life Insurance Corporation of India, Bombay-1.

S. K. CHATTERJEE,  
Chief Executive Officer and Secretary.

## MINISTRY OF TRANSPORT AND AVIATION

(Department of Transport and Shipping)

(Transport Wing)

Ports

*New Delhi, the 9th March 1967*

S.O. 876.—In exercise of the powers conferred by section 18 of the Calcutta Port Act, 1890 (Bengal Act III of 1890), the Central Government is pleased to authorise the Commissioners for the Port of Calcutta to raise on the 15th March, 1967 a debenture loan of Rs. 100 lakhs (Rupees one hundred lakhs), repayable on the 15th March, 1979.

[No. 9-PC(14)/67.]

K. L. GUPTA, Under Secy.

## MINISTRY OF INFORMATION AND BROADCASTING

ORDERS

*New Delhi, the 4th March 1967*

S.O. 877.—In pursuance of the directions issued under the provisions of each of the enactments specified in the First Schedule annexed hereto the Central Government after considering the recommendation of the Film Advisory Board, Bombay hereby approves the films specified in column 2 of the Second Schedule annexed hereto in all their language versions to be of the description specified against each in column 6 of the said Second Schedule.

### THE FIRST SCHEDULE

1. Sub-Section (4) of the Section 12 and Section 16 of the Cinematograph Act, 1952 (Central Act XXXVII of 1952).
2. Sub-Section (3) of Section 5 and Section 9 of the Bombay Cinemas (Regulation) Act, 1953 (Bombay Act XI of 1953).
3. Sub-Section (4) of Section 5 and Section 9 of the Saurashtra Cinemas (Regulation) Act, 1953 (Saurashtra Act XVII of 1953).

## THE SECOND SCHEDULE

Sl. No.	Title of the film	Length 35 mm	Name of the applicant	Name of the Producer	Whether a scientific film or a film intended for educational purposes or a film dealing with news and current events or a documentary film
1	2	3	4	5	6
1.	Maharashtra News No. 175.	297 M	Director of Publicity, Government of Maharashtra, Bombay-34.		Film dealing with news and current events (For release in Maharashtra Circuit only).
2.	Maharashtra News No. 176.	299 M		Do.	Do.
3.	Sankalp Ani Siddhi.	305 M	Director of Publicity, Govt. of Maharashtra, Bombay-34.		Film dealing with news and current events (For release in Maharashtra Circuit only)
4.	Aaj Ka Maharashtra.	587 M		Do.	Film intended for educational purposes (For release in Maharashtra Circuit only)
5.	Shetbandhal Tar Sukhane Nandal.	293·81 M	Office of the Director of Agriculture, Film Centre, 68, Tardeo Road, Bombay-34.		Do.
6.	Bhoomug-Paisachi Oob.	293·51 M		Do.	Do.

[No. F. 24/1/67-FP App. 1151.]

**S.O. 878.**—In pursuance of the directions issued under the provisions of each of the enactments specified in the First Schedule annexed hereto, the Central Government after considering the recommendations of the Films Advisory Board, Bombay hereby approves the films specified in column 2 of the Second Schedule annexed hereto in Gujarati to be of the description specified against each in column 6 of the said Second Schedule.

## THE FIRST SCHEDULE

- (1) Sub-Section 4 of the Section 12 and Section 16 of the Cinematograph Act, 1952 (Central Act XXXVII of 1952).
- (2) Sub-Section (3) of Section 5 and Section 9 of the Saurashtra Cinemas (Regulation) Act, 1953 (Saurashtra Act XVII of 1953).
- (3) Sub-Section (4) of Section 5 and Section 9 of the Bombay Cinemas (Regulation) Act, 1953 (Saurashtra Act XVII of 1953).

## THE SECOND SCHEDULE

Sl. No.	Title of the film	Length 35 mm.	Name of the applicant	Name of the Producer	Whether a scientific film or a film intended for educational purposes or a film dealing with news and current events or a documentary film.
1	2	3	4	5	6
1.	Mahitichitra No. 76	252.43 M	Director of Information, Government of Gujarat, Ahmedabad.		Film dealing with news and current events (For release in Gujarat Circuit only.)
2.	Mahitichitra No. 77.	280.42 M	Do.		Do.

[No. F. 24/1/67-FP App. 1152.]

D. R. KHANNA, Dy. Secy.



**MINISTRY OF LABOUR, EMPLOYMENT AND REHABILITATION****(Department of Labour and Employment)***New Delhi, the 7th March 1967*

**S.O. 879.**—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal, Delhi in the industrial dispute between the S. S. Light Railways Limited Headquarters at Saharanpur with Managing Agency by Messrs. Martin Burn Limited at Calcutta and their workmen, which was received by the Central Government on the 24th February, 1967.

**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL, DELHI****PRESENT:**

Shri Anand Narain Kaul, Central Government Industrial Tribunal, Delhi.

*31st January, 1967***REFERENCE I. D. No. 1 OF 1965****BETWEEN.**

The employers in relation to the S. S. Light Railway Company Limited Headquarters at Saharanpur owned by Messrs Martin and Burn Limited, Head Office at Calcutta.

**AND**

Their workman.

Shri S. K. Malik.—*For the management.*Shri Y. D. Sharma, along with Shri Baljit Singh Sharma.—*For the workmen.***AWARD**

By S. O. dated the 21st January, 1965, the Central Government was pleased to refer to this Tribunal for adjudication an industrial dispute existing between the employers in relation to the S. S. Light Railway Company Limited Headquartered at Saharanpur (to be referred to hereinafter as the company) and their workman in respect of the matters specified in the Schedule annexed thereto. The dispute as specified in the Schedule is as follows:—

“Whether the action of the management of the Shahdara (Delhi) Saharanpur Light Railway Company Limited in removing from service Shri Baljit Singh Sharma, Station Master, Noli is justified. If not, to what relief is the workman entitled?”.

The workman is represented in the dispute by the S.S. Railway Workers' Union, Gali Bahuji, Paharidhraj, Delhi, which sponsored the dispute and which shall be referred to hereinafter as the Union.

2. The parties filed their respective written statements on February 27, 1965, and rejoinders were also filed by both parties on April 19, 1965. The parties agreed that the only issue that arises from the pleadings of the parties is the one embodied in the term of reference. In support of its case each party has filed a large number of documents. The company examined as many as 12 witnesses while on behalf of the union only the workman concerned Shri Baljit Singh Sharma was examined. After the evidence of the parties was concluded it was considered necessary with the agreement of the parties to inspect the site of the occurrence which led to the dispute. Inspection of the Railway Track to the extent that it was necessary for appreciating the evidence produced before the Tribunal was accordingly made on November 23, 1965 in the presence of the representatives of the parties and a detailed inspection note was recorded. After the inspection it was considered necessary to ask the management to produce a permanent way sketch of the Railway Track between Noli and Shahdara. This was accordingly produced. Prolonged arguments of the learned representatives of the parties were heard at as many as 19 hearings from 14th December, 1965 onwards. I have carefully gone through the voluminous record of the case and the evidence led before me and having considered the arguments of the learned representatives of the parties I proceed to dispose of the issue.

3. The respondent in this case namely the S. S.—Light Railway Company Limited runs a railway between Shahdara, the terminus station in Delhi (to be

referred to hereinafter as DSH) and Saharanpur. Messrs Martin Burn Ltd., are the managing agents of the company. Noli Station is the first Station on the Railway after the terminus Station at DSH and situated at 8.82 Km. from the latter. At the relevant time Shri Baljit Singh Sharma, the concerned workman (to be referred to hereinafter as Baljit) was employed as a Station-master in the Railway and posted at Noli Station. On the date of occurrence *viz.*, 1st January, 1963 Shri Baljit was on duty from 7:50 hrs. to 21 hrs. and one Shri R. N. Sharma was the Assistant Station Master at Noli on that date who was on duty from 19:20 hrs. to 24 hrs. on 31st December, 1962 and from 00 hrs. to 7:50 hrs. on 1st January, 1963.

4. On the 1st January, 1963 an UP Goods Special Train which left DSH Station at 00:45 hrs. arrived at Noli Station at 02:10 hrs. and thereafter its engine went out of order and it could not proceed further without any relief engine. With a view to arranging for a relief engine, the ASM on duty at Noli Station at the time *viz.* Shri R. N. Sharma tried to contact DSH and found that the telegraph communication between Noli and DSH had completely failed. As required by Rule 2 of Appendix A of Chapter IV of the Railway's General and Subsidiary Rules, Part I and II, the said ASM Noli prepared a programme of working trains in duplicate, from his time table, in the order of priority of timings in that time table (to be referred to hereinafter as the programme). He thereafter, started 8 Dn. train, which was the first train in the programme, at 3:00 hrs. with permission to proceed without Line Clear as required by the Rules. 8 Dn. arrived at DSH at 04:15 hrs. and the Guard of this train through whom a copy of the programme was sent by ASM Noli to Shri J. K. Sharma, ASM on duty at DSH handed it over to the latter so that it might be followed by him also, as required by the Rules, until the telegraph communication between these two Stations DSH and Noli was restored. The second train in the programme was the 1 UP train which was scheduled to leave DSH at 05:00 hrs. However, as the engine allocated for the 1 UP train developed trouble and was not available, the engine for the 3 UP train of that day which was the 3rd train in the programme was utilised for taking the 1 UP train from DSH to its destination towards Saharanpur side with permission to proceed without Line Clear. 1 UP train did not arrive at Noli in time and actually arrived at 07:13 hrs. The 4th train in the programme was the 10 Dn. which, according to the time table, was to cross the 3 UP train at Noli—the Railway track between DSH and Noli being a single line track. Since the engine of the 3 Up train had been utilised for the 1 Up train, the former train could not start from DSH according to Schedule and its departure was delayed. In the meantime the 10 Dn. train arrived at Noli from Gotra Station (on the Saharanpur side) at 07:55 A.M. At about 08:00 hrs. on 1st January, 1963, the engine of 1 Up train became available for starting the 3 Up train from DSH to its destination, Saharanpur, and accordingly at 8:15 hrs. the ASM on duty at DSH allowed the 3 Up train to proceed from DSH towards Noli, in accordance with the programme, with permission to proceed without Line Clear. Normally, according to the Rules, the 10 Dn. train which as already stated, was the 4th train in the programme and which had already arrived at Noli from Gotra Station at 07:55 A.M. should not have been allowed to proceed from Noli until the 3rd train in the programme namely the 3 Up train had also arrived at Noli from DSH and had crossed the 10 Dn. there. According to the management, the ASM or SM Incharge of Noli Station at the time had no authority to allow the 10 Dn. train to start from Noli for DSH but should have detained it at Noli Station till the arrival of 3 Up train at Noli, from DSH. Shri Baljit, who was the SM Incharge of the Noli Station at the time, however, allowed the 10 Dn. train to leave Noli Station for DSH at 08:05 A.M. with permission to proceed without Line Clear, before the arrival of 3 Up train at Noli. It is the management's case that this action of Shri Baljit was in complete disregard of the aforesaid rules and the programme made thereunder by the ASM of his Station.

5. The Union's case, however, is that there was a telephonic enquiry by the ALO, Saharanpur from Noli as to the engine position of Shahdara. Moreover, since the 1 Up train had not arrived at Noli in time the ASM Noli in consultation with the SM, Shri Baljit sent a special messenger to the Station Master on duty at DSH to ascertain the position of Up trains. The special messenger, it is alleged, got from the Station Master, DSH a written message about the position of the 3 Up train which he handed over back to the Station Master at Noli. According to Shri Baljit this message amounted to an assurance from the SM, DSH to the SM, Noli, that unless 10 Dn. train from Noli had reached DSH, 3 Up train could not be started from DSH due to non-availability of engine as allegedly communicated to the Station Master DSH by the Loco shed there. It is further the case of the union that the copy of the original programme of Noli which was with the Station Master, DSH had already been returned by him to SM, Noli by the 1 Up train "to enable SM Noli to start 10 Dn. train first for DSH." It was in view of the alleged written assurance from the Station Master, DSH about the power position at DSH and further of the return of the original programme by the Station

Master, DSH, that Shri Baljit, according to the union, allowed the 10 Dn. train to start from Noli at 08.05 hrs. with permission to proceed without Line Clear. Shri Baljit did this, allegedly, to avoid undue detention of the 10 Dn. train and in the best interests of the running of Railway trains.

6. The drivers of 10 Dn. and 3 Up trains both proceeded cautiously as was required by the Rules in such circumstances. At Km. 3/1-2 from Shahdara, the driver of 3 Up train saw at a distance, the locomotive of 10 Dn., emitting its smoke and coming towards his train from Noli side. He immediately started blowing his engine whistle with a view to attract the attention of the driver of the approaching engine, applied both Vacuum and Hand Brakes and was able to stop his train allegedly within a distance of about 1 T.P. and, immediately thereafter, started backing the train in order to avoid its collision with the 10 Dn. train. The driver of the 10 Dn. train from Noli which was approaching from the opposite direction, at the same time also noticed the 3 Up train coming towards his train from DSH side on the same track. He also immediately opened the whistle, shut up the steam and applied Steam and Hand Brakes of his engine. He was also able to stop the train within about 2½ T. Ps. According to the management the distance between the points at which the two engines were brought to a halt in the same block section was about 3 T.Ps. i.e., about 552 feet. This is much less than a quarter of a mile or 1,320 feet from each other, and this according to the management makes the incident a case of an "averted collision". According to the union, however, the distance between the engines of the two trains at the time of stoppage in the track was more than ¼th of a mile and it was not a case of an "averted collision" but a case of breach of block rules for which ASM at DSH was responsible in view of the fact that he had started the 3 Up train without justification and against the rules and in spite of the assurance given to S.M. Noli about the power position at DSH.

7. Following the occurrence there was, in the first instance, an enquiry held on the 2nd January, 1963 by a committee which has been described as the Major Joint Enquiry Committee by MW12. The report of this Committee is Ext. M/35B wherein it is designated as officer's Joint Enquiry. This will be referred to hereinafter as Enquiry No. 1. Another enquiry which has been described by MW12 as the Administrative Officers Enquiry and will be referred to hereinafter as the second Enquiry was held near about 11th January, 1963. The Committee which held this enquiry has also been described as the Fact Finding Enquiry Committee. The report of the Committee is Ext. M34/A wherein it has described the enquiry as Administrative Officer's Joint Enquiry. It was on the basis of the 2nd Enquiry Committee's report that a Chargesheet dated 1-2-63 was issued to Shri Baljit which also contains orders of suspension. After Shri Baljit submitted his reply to the chargesheet, a third enquiry which may be described as the Final Enquiry was held in the presence of Shri Baljit from 17th to 19th April, 1963. This Committee had two members one Shri P. C. Mukherji, Traffic Superintendent, who acted as its Chairman and another Shri K. N. Banerji, Chief Personnel Officer of the Railway who was a member. The report of this committee is Ext. MW12/6 wherein the committee has been referred to as the Administrative Officer Joint Enquiry Committee. This last enquiry was held not only against Shri Baljit but other officials of the Railway who were considered responsible, directly or indirectly, for the occurrence by the Fact Finding Committee. On the findings of this final Enquiry Committee an order of removal of Shri Baljit from service and of various punishments to other employees of the Railway was passed on the 6th May, 1963 by the General Manager. The dispute was taken in conciliation on the 12th February, 1964. During these conciliation proceedings it was suggested that Shri Baljit had not exhausted all remedies that lay with the Railway authorities and on this advice he filed an appeal on the 13th February, 1964, addressed to the general manager as provided for in departmental rules. A decision rejecting the appeal which is dated 18th September, 1964, was communicated to Shri Baljit by a letter of the same date followed by another letter dated 22nd September, 1964, which purports to be a corrected version of the previous letter. This appellate order and its communication has been the subject-matter of an acute controversy with which I shall deal at the proper place. Following this rejection of the appeal the conciliation proceedings were continued and resulted in the present reference.

8. Apart from the pleadings on the merits already referred to it is the union's case that Shri Baljit having been the secretary of the union during the preceding nine years, he was a protected workman, that in his capacity as secretary, he naturally came into clash with the officers of the Railway administration during conciliation proceedings on several disputes and during proceedings before Industrial Tribunals as also during meetings at personal levels connected with his legitimate trade union activities. As such Shri Baljit had allegedly become an eye sore to the management. He is stated to have further offended the management by

securing revised scales of pay for the employees of the railway through the Tribunal and in pursuing a dispute relating to Dearness Allowance before the Lucknow Tribunal which was pending at the time of his present victimisation. For these reasons according to the union Shri Baljit was purposely implicated in the occurrence of the 1st January, 1963 and was finally removed from service.

9. The first point for consideration is, whether the enquiry against Shri Baljit was a fair enquiry and whether this Tribunal is entitled to go into the merits of the case against him. At the hearing on the 29th March, 1965, a statement was made by Shri Mullick on behalf of the company that, although he stood by the domestic enquiry, he wanted to supplement the evidence. Considerable evidence was, accordingly, led on behalf of the company before me while on behalf of the union only Shri Baljit was examined. While this does not mean that the management itself does not rely on the domestic enquiry, there are a number of circumstances which lead to the conclusion that the procedure adopted must have caused prejudice to the workman and that the principles of natural justice were violated. One such circumstance is that the chargesheet Ext. W/13A was issued by and under the signatures of the Traffic Superintendent, Shri P. C. Mukherjee and it was Shri Mukherjee himself, who acted as the chairman of the domestic enquiry committee. In the conciliation proceedings also it was Shri Mukherjee who represented the management. It was pleaded on behalf of the union that an enquiry by the charge-sheeting officer offends against the principle that "no man can be a judge in his own cause or in 'Any in which he is interested.'" This is also known as the Doctrine of Bias. (A.I.R. 1960 S.C. 468) A.I.R. 1959 S.C. 1376, A.I.R. 1957 S.C. 425).

10. Another circumstance is that, although it is obvious that in a matter like this there could be no satisfactory finding without an inspection of the site of occurrence, neither the Fact Finding Enquiry Committee nor the Domestic Enquiry Committee cared to inspect the site. The importance of site inspection arises from the fact that it was necessary for the appreciation of oral evidence. In this connection it is note-worthy that if the distance between the engines was less than a quarter of a mile then it is a case of "averted collision", (as actually found by the Enquiry Committee) but if the distance between the engines at the time of stoppage was more than 1/4th of a mile then it was only a case of "Block Irregularity" — which is a much less serious matter than an "Averted Collision" and requiring much lighter punishment. Before the Fact Finding Enquiry Committee i.e., Enquiry No. 2 which was held on the 11th January, 1963, Shri Baljit is stated to have actually represented that the site be inspected. In the memo. of appeal to the Managing Agents Ext. MW12/12H, page 41, Para. 1(B), it has been specifically alleged that the Fact Finding Enquiry Committee did not care to inspect the site of accident or take the concerned drivers or guards along with the accused to the site as requested by Shri Baljit in his statement. In his explanation to the chargesheet, page 9, para. 12 Shri Baljit has emphasised the fact that the site of the accident had not been examined by the Fact Finding Enquiry Committee as per rules and, in these circumstances, it could not be ascertained definitely whether the distance between the two trains (when they came to a stop) was less than 440 Yards (one quarter of a mile). It is true that in the report of this Committee dated 11th January, 1963, Ext. M/34A, the finding begins with a statement that the members of the committee "having examined the site and the evidences....." It is, however, obvious that the statement as to the site having been examined is, to say the least, absolutely incorrect. Neither at the time of evidence nor at the hearing did the management take the stand that the site had been "examined" and there is nothing to show that it was actually examined. The very fact that the report of this committee begins with such a statement indicates the importance that must naturally be attached to the inspection of the site in a matter like this.

11. As to the necessity of site inspection Shri Baljit during the domestic enquiry as well as in the proceedings before me has drawn attention to a Circular of the Traffic Superintendent Saharanpur himself Ext. W/23 dated the 25th April, 1958 which runs as follows:—

"No. XD/HA/47/57.—Attention of the staff is drawn to para 4(i) (iv) & (v) page 7 of the Accident Manual in connection with the above. Officials while examining the site of the accident, soon after the occurrence, must record all observations and jointly sign the same on the spot.

All supervisory staff will please make a note."

It was contended that this Circular made obligatory an inspection of the site immediately after an accident. The subject of the Circular is "Preservation of Clues—Accident rules", and the reference is to page 7 of the Accident Manual which deals with preservation of clues in cases of accident which might possibly be due to sabotage but the language of the Circular does seem to assume that

examination of the site of accident has to take place as a matter of fact soon-after the occurrence. Even if, however, the Circular be not applicable to the circumstances of the present case, there could be no escape, as I have shown, for an Enquiry Committee from an inspection of the site, at least for the proper appreciation of oral evidence, if for nothing-else. That the site of occurrence was not inspected by the enquiry committee is also obvious from para. 21 page 9 of the appellate order Ext. MW12/13 passed on behalf of the Managing Agents. In this paragraph an attempt has been made to justify the failure of the Enquiry-Committee to inspect the site and its action in ignoring the specific request of Shri Baljit for an inspection of the site. The reasoning is that an inspection of the site would have been necessary if the requisite evidence as to the distance between the two engines from their respective points of stoppage were lacking.

12. A so-called plan of the site of occurrence marked as Ext. MW 12/9 is stated to have been produced before the 3rd Enquiry Committee by the management. It bears the signatures of the District Traffic Superintendent and the Assistant Engineer but on what basis this plan was prepared is not clear. Shri P. C. Mukerjee, MW 12 has referred to this document in his evidence and has stated that this corresponds to plan No. 3 produced before me on 4th May, 1965. Another version of this site plan is Ext. MW 12/9A which, strangely enough, is said to be according to scale and to correctly represent the position of the site. The very fact that a so-called correct version according to scale had to be produced during the proceedings goes to show that the document Ext. MW 12/9 produced before the 3rd Enquiry Committee is not according to scale and does not represent the correct position. This shows that not only was the site not inspected but even such a material and important document as the site plan produced before the Committee was lacking in authenticity. In fact MW 12 has stated that at the top of Ext. MW 12/9, the Committee had made certain corrections in ink. This portion of the document which is in ink does not bear anybody's initials and it cannot be said at what stage this so-called correction was made in the document. The correction is stated to have been made on the basis of the details furnished by the management at the enquiry. This statement is surprisingly vague and it is not clear in what manner and at what stage the details were furnished by the management which enabled the Committee to make the correction in Ext. MW 12/9. In cross-examination MW 12 has admitted that it was Shri A. N. Bose the then Superintendent, of the Railway who produced the site plan Ext. MW 12/9 but he was not a witness at the enquiry and was only representing the management. This site plan has not been referred to in any order-sheet of day-to-day proceedings. In fact no order-sheet was maintained. The only record in which this document is noted is the list of documents attached to the Enquiry Report but, in further cross-examination, MW12 has admitted that, while the enquiry concluded on the 19th of April, 1963, the list was prepared after the 19th. This, of course, is quite natural. The witness could not say whether the site plan Ext. MW 12/9 was included in the report of the earlier two Enquiry Committees or was produced before them. He was put a question, whether the site plan was shown to Shri Baljit at the enquiry and, although he denied that it was not shown to him, there is no satisfactory record or evidence to show that the site plan was submitted in the regular course of evidence produced before the Enquiry Committee. My own note of inspection of the site on the 25th November, 1965 which was followed by a direction to submit the original sketch plan of the track will show how difficult it was, in the circumstances of the case, to determine the precise distance between the engines of the two opposing trains when they stopped. MW 12 has further stated that the Committee was not requested by anybody at the Departmental Enquiry to make an inspection of the site of occurrence nor did the Committee consider it necessary to inspect the site. The reason given is that from the evidence of the guards of the two trains involved and from that of the driver of 10 DN, the members of the Committee were in a position to locate the exact position where the two engines stopped. The statement of MW12 that nobody requested the Committee to inspect the site does not appear to be correct. In para. 9 of his statement before the Committee, Ext. MW 12/4, Shri Baljit pointedly referred to the fact that neither the Fact Finding Enquiry Committee members nor any Head of the Departmental Officers examined the site of the accident immediately as per rules nor were the two drivers and the two guards of the trains involved ever taken to the site to point out the exact location nor was the distance between the two trains ever measured. The comments made in para. 21 of the Appellate order of the Managing Agents on the question of ignoring Baljit's request for inspection of the site goes contrary to the evidence of MW 12 on this point. Even if it was not the duty of the members of the various enquiry committees including the Departmental Enquiry Committee to inspect the site *suo moto*, the above statement of Shri Baljit should be considered to be sufficient to draw the attention of the members to the un-avoidable necessity of an inspection of the site. In the absence of such an inspection the committee could not have

recorded correct conclusions and I cannot but hold that this failure on the part of the Departmental Enquiry Committee to inspect the site or at least to examine somebody who had actually inspected the site and prepared the site plan is a very serious lacuna in the proceedings of the committee and vitiates its findings.

13. A third circumstance of great importance is that Shri Bashir Ahmed, the driver of 3 UP train, on the date of occurrence, was not examined at the Departmental Enquiry although he was a key witness. After all the conclusion of the Departmental Enquiry Committee about the distance between the two engines, when they stopped, is based primarily on the evidence of the drivers and the guards of the two trains involved and the examination of Shri Bashir Ahmed as a witness was un-avoidable. It is true that Shri Bashir Ahmed, as stated in his own evidence before me, was on leave for Haj Pilgrimage from March, 1963 for 3½ months but if that was so he should either have been compelled to return in time to be examined by the Departmental Enquiry Committee or the Committee should have waited until his return. A perusal of the findings Ext. MW 12/6A of the Departmental Enquiry Committee shows that the evidence of the drivers of the two trains, obviously including Shri Bashir Ahmed, seems to have been relied on although he was not actually examined by the Committee. The only discussion of the evidence of the drivers and the guards in the report of the Departmental Enquiry Committee is as follows *vide* Ext. MW 12/6A (Remarks and reasons for findings):—

"It is evident from the statements of drivers and guards that 3 UP and 10 Dn. trains of 1st January 1963 came within 552 ft. of each other on the same block section with single line working between Delhi-Shahdara and Noli stations of S. S. Railway though there was provision for their crossing at Noli Station both in the Programme and in the Working Time Table. So, it is established that this was a case of averted collision. It was due to the alertness and presence of mind shown by the drivers concerned that a serious accident was averted."

14. It is significant that even before the Second Enquiry Committee (Fact Finding Enquiry Committee) which held its sitting on the 11th January, 1963 and preceded the Departmental Enquiry Committee, Shri Bashir Ahmed was not examined fully or independently and the first question put to him was as follows:—

"Q. 1. Your statement was recorded on 2nd January, 1963. Do you accept it as true?"

A. Yes."

Then followed three questions which did not relate to the question of the stoppage of the engines or to the distance between them. The only detailed statement made by Shri Bashir Ahmed is, therefore, the one made on the 2nd January before the first Enquiry Committee. All this shows how unsatisfactory was the material and how defective the procedure adopted by the Departmental Enquiry Committee to arrive at its findings on this basic issue.

15. Another serious defect in the procedure adopted by the Departmental Enquiry Committee is that the statements of several other witnesses which were recorded at preceding enquiries were adopted as their statements at the Departmental Enquiry. This happened at least in the cases of Sarvashri Ram Nath Sharma, ASM, Noli, Blshen, Pointsman, DSH, Bishamber Singh, Pointsman Noli and J. K. Sharma, ASM, DSH. In almost all these cases the evidence of the witnesses as recorded by the Fact Finding Enquiry Committee (Second Committee) was adopted as examination-in-chief before the Departmental Enquiry Committee. But even the Fact Finding Enquiry Committee had adopted as evidence before it the statements of the same witnesses recorded by the first Committee on the 2nd January, 1963. This procedure could hardly be conducive to a correct recording of evidence and to its appreciation. It is obvious that if an important witness is fully examined at a preliminary enquiry, in the absence of an accused person, and that statement is accepted as the evidence of that witness at the formal enquiry against the accused person without a fresh examination the procedure is bound to cause prejudice to the accused person. Such evidence can never inspire confidence and can only serve the interests of the prosecution. It is quite a different matter if the previous evidence is used by a party for corroboration or contradiction at the formal enquiry. Departmental enquiries need not, of course, conform to judicial practice but the principles of natural justice have to be observed in any case.

16. In the case of Indian Iron and Steel Company, Ltd., and their workmen (1958 I LLJ 260), their lordships of the Supreme Court were pleased to observe that in cases of dismissal on misconduct, the tribunal cannot act as a court of appeal and substitute its own judgment for that of the management, but it will interfere (i) when there is a want of good faith, (ii) when there is victimisation or unfair labour practice, (iii) when the management has been guilty of a basic error or

violation of a principle of natural justice, and (iv) when on the materials the finding is completely baseless or perverse. In the case of Phulbari Tea Estate and its workmen (1959 II LLJ 663), statements of witnesses deposing against the concerned workman had been recorded in his absence and at the time of the domestic enquiry, the concerned workman was not given the copies of the statements so recorded, nor were the statements read over to him, before he was called upon to put questions to the witnesses who had given statements prejudicial to his case. On these facts it was held by the Hon'ble Supreme Court that the domestic enquiry was vitiated by violation of principles of natural justice inasmuch as it failed to give reasonable opportunity to the concerned workman to defend himself. Their lordships observed that the defect in the conduct of the enquiry could have been cured if the company had produced the witnesses before the industrial tribunal and given an opportunity to the concerned workman to cross-examine them there. In the case of Ritz Theatre (Private), Ltd., Delhi and its workmen (1962 II LLJ 493), their lordships of the Supreme Court were pleased to observe as follows at page 498:—

"If it appears that the departmental enquiry held by the employer is not fair in the sense that proper charge had not been served on the employer or proper or full opportunity had not been given to the employee to meet the charge, or the enquiry has been affected by other grave irregularities vitiating it, then the position would be that the tribunal would be entitled to deal with the merits of the dispute as to the dismissal of the employee for itself. The same result follows if no enquiry has been held at all. In other words, where the tribunal is dealing with a dispute relating to the dismissal of an industrial employee, if it is satisfied that no enquiry has been held or the enquiry which has been held is not proper or fair or that the findings recorded by the enquiry-officer are perverse, the whole issue is at large before the tribunal.

In regard to cases falling under the last category of cases stated *supra*, it is however, open to the employer to adduce additional evidence and satisfy the tribunal that the dismissal of the employee concerned is justified. And in such a case the tribunal would give opportunity to the employer to lead such evidence, would give opportunity to the employee to meet that evidence and deal with the dispute between the parties in the light of the whole of the evidence thus adduced before it."

17. In the case of Kesoram Cotton Mills, Ltd. and Gangadhar (1963 II LLJ 371), the examination of witnesses at the domestic enquiry appears to have been conducted in the same manner as in the present case. What happened there at the enquiries was that when the witnesses were produced, previously prepared signed statements of the witnesses were read over to them and they were asked whether the statements were correct and whether they had signed them. The statements were also read over and explained to the workmen charged and they were then asked to cross-examine the witnesses. No copies of statements of witnesses were supplied to the workmen at any time. In considering this procedure their lordships of the Supreme Court referred to the following observations made by them in the case of *State of Mysore v. Shivabasappa Shivappa Makapur* (A.I.R. 1963 S.C. 375):—

"When the evidence is oral, normally the examination of the witness will, in its entirety, take place before the party charged, who will have full opportunity of cross-examining him. The position is the same when a witness is called, the statement given previously by him behind the back of the party is put to him; and admitted in evidence, a copy thereof is given to the party, and he is given an opportunity to cross-examine him."

Their lordships were further pleased to observe as follows at page 380:—

"It seems to us therefore that when one is dealing with domestic inquiries in industrial matters, the proper course for the management is to examine the witnesses from the beginning to the end in the presence of the workman at the inquiry itself. Oral examination always takes much longer than a mere reading of a prepared statement of the same length and brings home the evidence more clearly to the person against whom the inquiry is being held. Generally speaking, therefore, we should expect a domestic inquiry by the management to be of this kind. Even so, we recognize the force of the argument on behalf of the appellant that the main principles of natural justice cannot change from tribunal to tribunal and therefore it may be possible to have another method of conducting a domestic inquiry (though we again repeat that this should not be the rule but the exception) and that is

in the manner laid down in Shivabasappa case (A.I.R. 1963 S.C. 375) (*vide supra*). The minimum that we shall expect where witnesses are not examined from the very beginning at the inquiry in the presence of the person charged is that the person charged should be given a copy of the statements made by the witnesses which are to be used at the inquiry, well in advance before the inquiry begins, and when we say that the copy of the statements should be given well in advance we mean that it should be given at least two days before the inquiry is to begin. If this is not done and yet the witnesses are not examined-in-chief fully at the inquiry, we do not think that it can be said that principles of natural justice which provide that the person charged should have an adequate opportunity of defending himself are complied with in the case of a domestic inquiry in an industrial matter."

In the case before them their lordships upheld the finding of the tribunal that the principles of natural justice had not been complied with.

18. The same principles were reiterated by their lordships of the Supreme Court in the case of Khardah and Company Ltd., and its workmen (1963 II LLJ 452). The following observations made by their lordships in that case are pertinent to the present discussion:—

"In such enquiries it is desirable that all witnesses on whose testimony the management relies in support of its charge against the workman should be examined in his presence. Recording evidence in the presence of the workman concerned serves a very important purpose. The witness knows that he is giving evidence against a particular individual who is present before him, and therefore, he is cautious in making his statement. Besides, when evidence is recorded in the presence of the accused person, there is no room for persuading the witness to make convenient statements, and it is always easier for an accused person to cross-examine the witness if his evidence is recorded in his presence. Hence the idea of recording statements of witnesses *ex parte* and then producing the witnesses before the employee concerned for cross-examination after serving him with such previously recorded statements should be discouraged even in cases where the witnesses concerned make a general statement on the latter occasion that their statements already recorded correctly represent what they have stated. Unless there are compelling reasons to do so, the normal procedure should be followed and all evidence should be recorded in the presence of the workman who stands charged with the commission of acts constituting misconduct."

19. In the present case there is nothing to show that copies of the depositions made by witnesses at previous enquiries were supplied to Shri Baljit before the third and final enquiry to enable him to cross-examine the witnesses whose previous statements were accepted as the examination-in-chief. In fact, there is an allegation in Para. 3 of the statement of claim that "both the Enquiry Committees did not permit the workman to take copies of its proceedings during the inquiries". In reply to this allegation the management only stated that there was nothing to prevent Shri Baljit from taking copies of the enquiry proceedings during the enquiry and further that the copies of the proceedings of enquiry into the charges were furnished to him after the conclusion of the enquiry in accordance with the Railway's standing orders. In his evidence, MW 12 has stated that copies of the statements of witnesses made at the enquiry were furnished to the charged persons at their request after the enquiry, that the Committee was requested during the proceedings by Shri Baljit to furnish copies of the statements but the Committee did not do so because such is not the practice or procedure adopted by the Committee but that Shri Baljit was taking notes of the statements as they were being dictated. At page 13 of his evidence MW 12 has in fact stated that he did not remember whether along with the charge-sheet or thereafter he supplied to Shri Baljit copies of the reports of the proceedings of the two preceding Enquiry Committees. There is, therefore, every reason to hold that copies of previous depositions of witnesses were not supplied to the accused persons before the 3rd enquiry began or even at the time of the commencement of the evidence of the witnesses concerned. In these circumstances the procedure adopted of accepting the previous depositions of a witness taken in the absence of the accused person as his examination-in-chief was a violation of the principles of natural justice.

20. The fact that there were as many as three elaborate enquiries, one following the other, at least one of which as I shall show presently was quite un-called for,



must also be treated as an unfair labour practice since this was bound to prejudice an accused employee in his defence.

21. According to Rule 3 (Classification of Accidents) as amended up-to-date, accidents are divided into fourteen classes namely A, B, C, D, E, F, G, H, J, K, L, M, N, and P, details of which are given in Appendix 'A' and serious accidents are those falling under Class A and Class B. Rule 4 provides for immediate action to be taken when various types of accidents occur.

22. A reference to Appendix 'A' as amended in 1960 will show that accidents under Class 'A' cover cases of actual collisions involving trains carrying or not carrying passengers and also collisions occurring in shunting, marshalling yards, Loco yards and siding etc. but not involving a train. Accidents under Class 'B' cover only derailments of trains carrying or not carrying passengers and also derailments occurring in shunting, marshalling yards, Loco yards, and siding etc. but not involving a train. A reference to page 4 of the Appendix will show that an accident coming under the category of 'Averted collision' between trains one or both of which is or are trains carrying passengers, falls under Class 'C' which according to Rule 3 quoted above is not to be treated as a serious accident. Even assuming, therefore, that the occurrence in the present case for which responsibility is attributed to Shri Baljit was an "Averted Collision", it was not a serious type of accident according to the Accident Manual.

23. Where a train carrying passengers enters a Block Section without any authority or without a proper "Authority to Proceed" it would, according to the Accident Manual, amount to a breach of Block Rules and would be an accident of Class 'E', Item 1, page 5 of the Appendix.

24. According to Rule 12 (page 15) of the Accident Manual, enquiries are divided into the following four classes:—

- (i) 'Government Inspector's Enquiry
- (ii) Major Joint Enquiry
- (iii) Minor Joint Enquiry
- (iv) Departmental Enquiry."

Rule 13 provides for eventuanities in which an enquiry is necessary. Clause (a) of Rule 13 lays down that except when dispensed with in accordance with sub-para (b) and (c) below, a Major or Minor Joint Enquiry will be held:—

- (i) if the accident is classified as Class 'A', Items 1 to 4, and Class 'B', Items 1 to 4 or if a passenger train is involved,
- (ii) if the system of working is suspected to be defective, and
- (iii) if an enquiry is otherwise considered necessary by the Superintendent/Traffic Superintendent/General Manager.

Under sub-para (b) of Rule 13, a Joint Enquiry may be dispensed with if,

- (i) an Enquiry is to be held by the Government Inspector in respect of Railways or
- (ii) the accident has not been attended with loss of human life or with grievous injury to person or serious damage to property or
- (iii) there is no reasonable doubt as to the cause of the accident.

Under sub-para (c), a Joint Enquiry may be dispensed with on the ground that one particular Department is clearly responsible.

25. It will be seen that but for the fact that a passenger train was involved the present case does not fall under Rule 13(a) since it was neither a Class 'A' or Class 'B' accident. In any case either a Major or a Minor Joint Enquiry was required to be held. Such an enquiry could also be held otherwise at the discretion of the Superintendent, T.S. or the General Manager where any of them considered it necessary. A Major Joint Enquiry, according to Rule 15, is an enquiry held by a Committee of Officers, which certain officials may also attend and should be held in the case of every serious accident. According to Clauses (b) and (c) of Rule 15, there are three classes of Major Joint Enquiries namely,

- (i) An Enquiry by Administrative Officers to be ordered by the General Manager and,
- (ii) An Enquiry by District Officers or

- (iii) by Assistant Officers to be ordered by Traffic Superintendent/Superintendent, either on his own initiative, or under the instructions of the General Manager.

Rule 15(c) further prescribes the Classes of accidents for which a particular type of Major Joint Enquiry is to be held. For example the District Officers Enquiry is to be held for Items 1, 2 and 3 of accidents of Classes 'A', 'B' and Class 'M' (persons falling out of or knocked down by a train or engine) while Assistant Officers' Enquiries are to be held for accidents falling under Item 4 of Classes 'A' and 'B' Item 1 of accidents of Classes 'C', 'D', 'E', 'G' and 'L' etc. The Rules also seem to contemplate that an Administrative Officers' Joint Enquiry will be ordered only by the General Manager at his discretion. It is clear from these Rules that they contemplate only one Major Joint Enquiry.

26. According to Rule 17, a Minor Joint Enquiry, is an enquiry held, under the orders of the Traffic Superintendent/Superintendent by a Committee of Senior Class III officials to enquire into an accident. According to Rule 24, a Departmental Enquiry is an enquiry held by a District or Assistant Officer of one Department only and it is to be held when the holding of a Joint Enquiry is not considered necessary in accordance with Rule 13(b). The Rules, therefore, seem to contemplate only a single enquiry which, at the discretion of the General Manager may be a Major Joint Enquiry by Administrative Officers. In fact, Rule 19 lays down exhaustively the form in which the report of a Major Joint Enquiry is to be submitted and the various items that should be included in it. Incidentally one such item prescribed is a 'Description of site of accident' and a 'Sketch of the site of accident'. Rule 19(e) prescribes in great detail the information required in the description of the site while sub-para (n) 1 lays down that in almost every case there should be a plan of site of accident and it should be on a good, fully dimensioned plan showing most of the information included under 'Description of site' and much of that included under 'Description of Accident'. According to sub-para (o), (p) and (q), Joint Enquiries into accidents are held for the purpose of eliciting the true facts of such occurrences, and must therefore be conducted with absolute impartiality. The object of the enquiry is to ascertain fully the causes of an accident with a view to preventing its recurrence. It is emphasized that "it is not sufficient merely to find out that on particular occasion something happened through the fault of one particular man", and that the scope of the enquiry should be extended so as to embrace wider field and to enquire whether there has been a general laxity of working, which is really the cause of the particular accident happening. It has been further observed that the prosecution and conviction of some low-paid class IV staff will not prevent accidents happening, if a loose system of work continues, and in fact, there is a certain amount of injustice in punishing a man for what is really the fault of those above him. It is again emphasised that the responsibility really rests with the supervising staff. Rule 20 prescribes the Time-Table for Joint Enquiries and Consideration of their Reports.

27. I have already given in Para 7 the sequence of the various enquiries that were held into this accident. It seems to me that there is a lot of confusion not only about the designations of these Committees but also as to their functions and it is impossible to agree that it could have been the object of the exhaustive rules in the Accident Manual which I have already quoted, to hold one after the other such elaborate enquiries in respect of the same occurrence and it is difficult to believe that such a procedure is followed in other railways or at least in State railways when such accidents occur. It is quite conceivable that, initially, there may be a sort of preliminary enquiry by the Government Inspector of Railways where necessary or by a Major or Minor Joint Enquiry Committee to elicit the facts, followed by what is known in Industrial Law as a domestic or departmental enquiry against those officials who have been found responsible at the preliminary enquiry. It is necessary here to explain that what has been described as the Departmental Enquiry in Rule 12(iv) of the Accident Manual is not a Departmental Enquiry in the sense in which it is generally understood in Industrial Law. As already explained a Departmental Enquiry under the Accident Manual is held by an officer of one Department only where a single Department is held responsible and a Major Joint Enquiry is not considered necessary.

28. Reverting to the subject of the nature of the enquiries actually held, it is significant that the first enquiry itself which was held on the 2nd January, 1963, has been designated as a "Major Joint Enquiry." The members of this Committee were Shri B. N. Mukherjee, Assistant Engineer and Shri A. K. Chatterjee, Assistant Loco Officer and Shri K. Mitter, District Traffic Superintendent was the Chairman. Under Rule 16(a) a committee for Major Joint Enquiry, will

usually consist of the Head of Departments, or/and the Superintendents, or/and the Deputies, where it is an Administrative Officers' Joint Enquiry and will usually consist of District Officers where it is a District Officers' Joint Enquiry. From the actual composition of the first Enquiry Committee it appears to have been a District Officers' Joint Enquiry Committee since I presume that the Assistant Engineer and the Assistant Loco Officer who were members of the Committee were holding independent charge and could be treated as District Officers under Note 1 to Rule 16.

29. Under Rule 15(c) a District Officers' Enquiry is only to be held for accidents falling under Items 1, 2 and 3 of Classes 'A', 'B' and 'M' of the Schedule "A" to the Accident Manual. Since the present occurrence did not fall under any of these Classes, a District Officers' Joint Enquiry does not seem to have been called for under the Rules. Normally what was required under Rule 15(c) was an Assistant Officers' Enquiry, since the occurrence could either be treated as an "averted collision" falling under Class 'C', Item 1, as held by the Enquiry Committee or as a block irregularity as contented by the Union and falling under Item 1, Class 'E'. It appears from the evidence of MW12, Shri P. C. Mukherjee that the first enquiry was not ordered by the General Manager and it was the third enquiry which was ordered by him. I presume that the first enquiry was ordered by either the Traffic Superintendent or the Superintendent of the S.S. Light Railway as required by the Rules.

30. The second enquiry which has been designated as the "Fact Finding Enquiry" or the "Administrative Officers' Enquiry" does not seem to have been called for, after a Major Joint Enquiry had already been held at the level of District Officers. Rule 12(a) seems to contemplate only one Major Joint Enquiry or Minor Joint Enquiry and not two. From the narrative Ext. MW12/6/B it appears that this Committee also was appointed by the General Manager. This Committee, as will be shown by its report Ext. M/34A, consisted of the Superintendent Saharanpur, Shri A. N. Bose, the Chief Engineer Calcutta, Shri M. P. Bhatnagar and Shri L. N. Chaudhary, Chief Mechanical Engineer, Calcutta. It has therefore been correctly described as the Administrative Officers' Joint Enquiry.

31. The four types of enquiries, referred to in Rule 12 and further discussed in Rule 13, are to my mind alternative forms of enquiries and not supplementary to each other. What then was the nature of the third enquiry which consisted of the Traffic Superintendent, Shri P. C. Mukerjee as Chairman and the Chief Personnel Officer, Shri K. N. Banerjee as a member. Although MW12, Shri P. C. Mukerjee, the Chairman of the Committee has in his evidence himself described the second committee of enquiry as the Administrative Officers' Enquiry Committee, it is rather odd that, in his own findings, Ext. MW12/6A, the third Committee has been described as the Administrative Officers' Joint Enquiry Committee. All this shows that there was a confusion as to the nature and designation of the various committees of enquiries and also a misconception as to the intention of the relevant rules in the Accident Manual which I have discussed extensively. Such a procedure was bound to cause prejudice to the accused persons as already observed by me and it is difficult to believe that it was followed in good faith.

32. I have already pointed out that it was not fair, at least in the circumstances of this case, that the Traffic Superintendent himself who signed the charge-sheet and who possibly had a hand in the decision to issue a charge-sheet and in determining its form should have presided at the Domestic Enquiry. A peculiarity in the procedure adopted was that the Superintendent, S.S. Light Railway who was himself a member of the Fact Finding Enquiry Committee was, according to the evidence of MW12, acting on behalf of the management at the third enquiry. This sort of thing was perhaps inevitable under an arrangement in which almost every important officer of the Organisation was associated at some stage or the other, in the chain of enquiries that were held. It was pointed out, during the hearing, by Shri Y. D. Sharma on behalf of the union that at the enquiry, it was one of the members of the Domestic Enquiry namely Shri K. N. Banerjee who was mainly putting questions. In his evidence before me Shri Mukerjee, MW12 has admitted that the only questions that Shri A. N. Bose (representing the management) put to various management's witnesses were with reference to their statements at the previous two Enquiries questioning them whether they had made those statements. Admittedly Shri Bose put on other questions and then it was left to the members of the committee to put questions. Records of statements of the witnesses that have been produced before me show that, apart from the introductory evidence as to the previous statements of the witnesses there was exhaustive examination of each witness at the enquiry and, according to MW12 all this cross-examination must have been conducted by the members of the Enquiry

Committee. The record of evidence of Shri Baljit himself shows that he was put as many as 36 questions which amounted to a searching cross-examination. While the cross-examination of an accused person at such enquiries is permissible it would be rather unusual for an Enquiry Officer or Officers themselves to perform the functions which the management's representative at the enquiry is expected to perform. In these circumstances I am constrained to hold that the enquiry could not be deemed to be fair.

33. There are other aspects of the case namely

- (i) the alleged victimisation of Shri Baljit owing to his trade union activities,
- (ii) the inordinate delay in the disposal on behalf of the Managing Agents of the appeal and the manner of disposal of the appeal filed by Baljit before them,
- (iii) the vindictive nature of the punishment inflicted and the
- (iv) perversity of certain findings of the Enquiry Committees. With all these aspects I shall deal at the proper place.

From what I have already shown above there is, however, sufficient justification for me to come to my own conclusions on the materials available and not to be bound by the findings of the 3rd Enquiry Committee. In fact I have myself held a comprehensive enquiry into almost all aspects of the case with the co-operation of the management and there is no reason why I should not come to my own conclusions in this case.

34. In dealing with the merits of the case, the points that seem to require determination are the following—

- (1) Whether the two trains involved in the accident were within a quarter of mile of each other before being brought to a halt and whether it was an 'averted collision'?
- (2) Whether Shri Baljit was justified in permitting the 10 Dn. train on the date of occurrence to proceed from Noli without the prior arrival of the 3 UP train at Noli, in accordance with the programme?
- (3) Whether the conduct of Shri Baljit in this episode amounted to inefficiency as is sought to be made out by the management?
- (4) Even if it was an 'averted collision', whether the punishment meted out to Shri Baljit was justified?
- (5) If it was not a case of 'averted collision', whether it was a case of 'Block Irregularity' on the part of Shri Baljit and to what punishment, if any, is he liable for this?
- (6) Whether it is a case of victimisation of Shri Baljit for his trade union activities?
- (7) To what relief, if any, is Shri Baljit entitled?

35. The definition of an "Averted Collision" as given in Para. 8 of the explanatory notes to Appendix 'A' at page 41 of the Accident Manual is as follows:—

"When two trains, or a train and vehicles, one of which must be a running train, are in the same block or station section within a quarter of a mile of each other before being brought to a halt, an 'Averted Collision' occurs. But, if they are separated by more than this distance, it should be treated as a Block irregularity or a case of passing signals at danger or otherwise, as the circumstances may warrant....."

The remaining portion of the definition is not relevant to the present discussion but it will be seen that the definition also explains what is meant by a 'Block Irregularity'.

36. Before discussing the evidence it is necessary to state that all along the Railway Track there are Telegraph Poles at regular distances and the estimate of the distance between the two engines at the relevant time is based on the numbers of Telegraph Poles (to be referred to hereinafter as the T.Ps.), that were actually seen by the engine drivers and the guards of the two trains at the time of occurrence. Normally, there are 24 Tps. to a mile which means that

the various numbers of T.Ps. referred to in the evidence, correspond to the following distances:

6 T.Ps. =  $\frac{1}{4}$  mile.

4 T.Ps. =  $\frac{1}{6}$  mile.

3 T.Ps. =  $\frac{1}{4}$  mile.

If the distance is referred to in Kilometer then there are 16 T.Ps. to a Kilometer. A reference to my Inspection Note dated 25th November, 1965 will show that starting from DSH, there is an un-manned level crossing at T.P., K.M. 2/1. This will be referred to hereinafter as Mandoli level crossing No. 1. There is no whistle board here but the crossing according to Shri Mukerji is meant for pedestrian traffic. This level crossing is within the area of village Mundoli. Beyond the above mentioned level crossing there is a Whistle Board at T.Ps. K.M. 2/10 near what is called the New Colony followed by a Speed Restriction Board between T.Ps. 2/13 and 2/14. Following this there is a three Kilometer Mile Stone (the distance being from DSH). Between T.Ps., K.M. 3/1 and 3/2, there is another Level Crossing, which now has a gate but the parties agree that on the date of occurrence it had no gate. It is not yet a manned crossing. This will be referred to hereinafter as Mandoli Level Crossing No. 2. At this level crossing there is an old Octroi Post of the Delhi Municipal Corporation, which according to an Octroi Peon on the spot is at least six years old. Mundoli is about half a mile from this crossing to the Noli side and is visible from here. Excepting the Octroi Post, there is no other old building or habitation near about this place. There is, however, a Gateman's lodge which appears to have been constructed recently and, in all probability, it did not exist at the time of occurrence. I have recorded, in the Note of Inspection, that, because of there being numerous trees on both sides, no T.P. could be visible from here except perhaps T.P. 3/3, which according to the management is the point of stoppage of 3 UP. These two Level Crossings are of very great importance for the purpose of appreciation of the evidence of the engine drivers and the guards of the two trains involved and it may be stated here that, according to Shri Y. D. Sharma, the learned representative of the Union, it was the Mandoli level crossing No. 1 at which Shri Bashir Ahmed, driver of 3 UP, states having stopped his engine. According to Shri P. C. Mukerji, the Traffic Superintendent, however, the point of stoppage referred to in the evidence of Shri Bashir Ahmed, is Mandoli Level Crossing No. 2, i.e. the next Level Crossing and not Mandoli Level Crossing No. 1. In this connection it is to be pointed out that the distance between the two Level Crossings No. 1 and 2 is a little over one Kilometer and if it is found from the evidence of Shri Bashir Ahmed and other witnesses that the engine of his train stopped at Level Crossing No. 1, and not at Level Crossing No. 2, it would result in a very material addition of one Kilometer to the distance between the two engines at the point of stoppage and increase the distance to much more than a quarter of mile, thus leading to the conclusion that it was not an 'Averted Collision'. It is from this point of view that it is a matter of the greatest importance in this case to determine at which of the two Level Crossings Shri Bashir Ahmed was able to stop the engine of the 3 UP Train.

37. Reverting to my Inspection Note (para. vi), it will be seen that between T.Ps. 3/4 and 3/5 is the point where Shri Rahim Bux, driver of 10 DN is said to have stopped the engine. From here some T.Ps. towards Noli are visible but not towards Shahdara. From Para. 7 of the Inspection Note, it will be seen that between T.Ps. 3/7 and 3/8 is the point where the driver of 10 DN, Shri Rahim Bux is stated to have first seen the 3 UP Train's engine in front. From here only 2 T.Ps. namely 3/6 and 3/5 are visible. There is also a Whistle Board at T.Ps. 3/8.

38. As already stated Shri Bashir Ahmed, driver of 3 UP train, on the relevant date, was examined before me but not before the Domestic Enquiry Committee (Enquiry No. 3) and even at Enquiry No. 2, his evidence as recorded by the very first Enquiry Committee on the 2nd January was accepted at his examination-in-chief. Shri Bashir Ahmed has stated as MW3 that his train left DSH Station at 8.15 hours and at the time of departure a form T9G (which is to be used when the programme system is in force) was handed over to the guard of the train but the signatures of the witness were obtained on it. According to the witness the train was moving at a speed of 10 miles per hour and after the train had proceeded towards Noli, he noticed smoke going up in front and immediately afterwards he noticed an engine coming towards his train. On noticing the smoke rising followed by the engine of the train opposite, his first anxiety was to control and stop the engine. The witness has further stated that he did not particularly try to ascertain the distance between his engine and the

engine of the train coming from the opposite direction but roughly speaking his idea was that the distance was of six Telegraph poles, that is to say, from his engine to the engine opposite, there would be the sixth pole according to a rough estimate. He has further stated that at the time when he noticed the smoke of the opposite train, his own engine was just a little before the "Mundoli Crossing." On noticing the smoke and the engine, the witness immediately opened the whistle and simultaneously applied the hand brake and the vacuum brake and was able to stop the train. Immediately afterwards he started backing the engine. According to the witness he had passed the Mundoli Crossing by the time he was able to stop the engine of his train and had gone to a distance of between  $\frac{1}{2}$  and one telegraph pole beyond that crossing. Now this is the most important part of his evidence and it is in this context that it is important to determine what the witness meant by the "Mundoli Crossing". It is necessary to state here that the fact of there being two Level Crossings in the area of village Mundoli came to light only at the time of inspection but was not known to the Tribunal at the time of the evidence of Shri Bashir Ahmed.

39. Further on the witness has stated that, at the time when he stopped the engine, he was not able to see, whether the engine of the train opposite had come to a stop or was going backwards or was in motion because the witness was concentrating on stopping and taking back his own engine in order to avert a collision. It was only after his engine had started going back that he noticed that the engine of the train opposite was at a stand still. At this point of time his own engine had passed the Mundoli Crossing on the backward journey. The witness could not give any idea of the time that he took in stopping his engine after noticing the smoke and the engine opposite and starting his own engine backward. In cross-examination to Shri Y. D. Sharma, he has stated that the first Level Crossing starting from DSH is a manned level crossing on the G.T. Road. This is referred to in the first sentence of Para. 2 of my Inspection Note. The only other level crossing between DSH and Noli which has a gate and is manned is one between the Noli Station and the signal before Noli Station. Evidently none of these two manned Level Crossings is the one which is referred to as the Mundoli Level Crossing in Bashir Ahmed's evidence. Further on the witness says that there are four other un-manned crossings in between and none of these bear a sign board indicating the name of the crossing. The witness has also stated that after he had noticed the smoke going up in front and was trying to stop his engine for taking it back he was not in a mood or in a position to see exactly the T.P.s. or to locate their number or any other land mark. According to him, there is *no building or village near about the point where he noticed the smoke or stopped his engine and even if he had been in a mood to notice any such objects there was nothing to notice, as there was no prominent land mark to be noticed.* Further on he states that while approaching the Mundoli level crossing which is an unmanned one and which has no regular gate, the engine drivers are required to give a whistle to warn any approaching car, or vehicle or pedestrian, and he had already given such a whistle as the Mundoli Level Crossing was approaching and it was immediately afterwards that he noticed the smoke of the engine opposite. In a further reference to the level crossing at which he stopped his engine, he has stated that although he did not know how many miles the Mundoli Level Crossing is from Shahdara, he knew very well that Crossing. He repeated that he had almost reached Mundoli Level Crossing when he noticed the smoke and stopped the train and he affirmed that it was the Mundoli Crossing. He further affirmed that he stopped the train within one T.P. of the Mundoli Crossing. Lastly he has explained that the first Level Crossing coming from the Shahdara side to Noli is the G.T. Road Crossing and the second crossing is the Mundoli Crossing. He could not, however, say whether the second level crossing from DSH i.e. the one which follows the G.T. Road Crossing is only one mile from Shahdara. It is necessary to state here that immediately after the Inspection Note had been dictated, it was discovered that the Railway maintains a permanent way sketch of the Railway Track between Noli and Shahdara and this was required to be produced. It was accordingly produced and since it is an authentic sketch of the Railway Track prepared before the dispute arose, a true copy of this was directed to be filed. That copy was accordingly produced and has been marked as Ext. T. A reference to this sketch broadly confirms my notings in the Inspection Note. This starting from DSH, there is the first level crossing at G.T. Road and then the 'kachcha' road level crossing in the Mandoli area marked by me as Level Crossing No. 1. It is, of course, No. 2 Level Crossing from DSH according to the sketch. On this there is the following note in the sketch plan:—

"Path way from Shahdara to Mundoli, Level Crossing 3rd Class No. 2."

Next is the Level Crossing marked by me as No. 2. There is here a Metal Road leading to Mundoli. An original note on the sketch plan at this point is as follows:—

“Road from Shahdara to Mundoli Level Crossing 3rd Class No. 3.”

It will be seen that according to the notings on the plan this is between K.M. 3/1 and K.M. 3/2.

40. Reverting to the evidence of the drivers and the guards concerned on the point under consideration—I may now refer to the evidence of Shri R. D. Tomar, MW4, who was the guard of the 3 UP train. Ext. M/16 is the statement that he gave on the 2nd January, 1963 before the first enquiry committee. He has stated therein that before the engine of his train passed the level crossing at mile 1/22-23, he heard the driver giving the long whistle and noticed that the latter was trying to control the speed. On peeping out he found that a train was approaching from Noli side at a distance of 4 or 5 T.P.s (?). The driver is stated to have controlled his train and stopped at K.M. 3/1-2 just after passing the level crossing. On finding that the opposite train was still approaching, he signalled to the driver to back the train, the signal having been given from the last T.T. attached to the rear of the Brake Van. In reply to a question he explained that the distance of 4 to 5 T.P.s. giving by him was between the engines of the two trains but since he was in the Brake Van, he was unable to give the correct distance between the two engines. In his evidence before me also Shri Tomar has stated that after his train had gone about 2 miles from DSH, the driver gave a long repeated whistle to attract his attention and then he peeped out. Before me also he has given the distance between the two engines at that point of time as 4 to 5 T.P.s., but has stated, for the first time, that as soon as the driver had stopped the train he got down to look out how far the opposite train was and noticed that there was a distance of 3 T.P.s. between the two engines. As I shall show presently, this attempt on the part of this witness to minimize the distance between the two engines seems to have been deliberate and motivated by personal animosity towards Shri Baljit Singh whom he held responsible for the occurrence. He has further stated before me that, at the time of stoppage the engine and half the attached bogie had crossed the Mandoli Level Crossing. It is in the witness's evidence that on reaching DSH in the backward journey, after the occurrence, he gave a written message Ext. M/13 about the occurrence to the ASM on duty at DSH. A note of the incident was also allegedly made in the “guard's journal” Ext. M/14 and in the “guard's load report” for driver Ext. M/15. In none of these documents is the distance between the two engines at any point of time, mentioned, but in all of them the point of stoppage of the engine of 3 UP at the site of occurrence is given as K.M. 3/1-2 and the time of stoppage as 8.22 hours. Shri Tomar's evidence before me and in Ext. M/16 is also to the same effect (T.P. 3/1).

41. It will be noticed that Shri Bashir Ahmed, MW3, driver of 3 UP train who is a most important witness on this point has not given any indication of the T.P. at which his engine had stopped nor of the time of its stoppage. In fact this witness has candidly stated that on noticing the engine opposite, his only concern was to stop his engine and back it and he was not in a mood or position to see exactly the T.P.s or locate their numbers. For obvious reasons it is Bashir's evidence rather than that of Shri Tomar which is most material on this particular point. He, as already stated, has given the distance between the two engines at the point of stoppage as 6 T.P.s., and has repeatedly explained that the Mandoli Level Crossing, which according to him is the second level crossing coming from Shahdara side, is the point near which his engine had stopped or had started backing on seeing the engine opposite. From the description of the location and nature of this level crossing which he has given it could not but have been the Mandoli Level Crossing No. 1 since it is the second level crossing from Shahdara and it has no land mark near about. This level crossing is marked as Level Crossing 3rd Class No. 2 in the original sketch plan Ext. T. From my note of the inspection of the site and from the sketch plan Ext. T. it will be seen that the Mandoli Level Crossing No. II is the 3rd from Shahdara side and is shown as Mandoli Level Crossing 3rd Class No. 3 in the sketch plan. It is to be emphasised that although the Mandoli Level Crossing No. I is located on a ‘kachcha’ road or path way leading from Shahdara to Mandoli vide Ext. T. the path way is wide enough to enable the passing of bullock-carts and even a motor vehicle. It will also be seen from my inspection note and also Ext. T. that none of the two level crossings within the area of Mandoli village is a manned crossing and the parties are agreed that on the date of occurrence even Mandoli Level Crossing No. II (the third from Shahdara) which is located on a metal road had no gate. On the relevant date, therefore both were 3rd Class unmanned

level crossings without a gate. At Mandoli Level Crossing No. II, there is, however, an old Octroi Post of the Delai Municipal Corporation which is at least six years old and the Mandoli village also is visible from here being at a distance of half a mile. In case this had been the Mandoli Level Crossing referred to in Shri Bashir Ahmed's evidence, he could not have stated that there is no prominent and mark to be noticed near about the crossing. If, therefore, Shri Bashir Ahmed's oral evidence is to be the basis of a finding then I have no doubt that it should be held that the point of stoppage of the 3 UP engine was at Mandoli Level Crossing No. I. Learned advocate for the company has argued that since there is an octroi post at Mandoli Level Crossing No. II evidently meant to check vehicles passing by the road that alone is the crossing which could have been meant by Bashir MW3. This cannot be correct, since as already shown by me Bashir has said that it was the Second Level Crossing from DSH and that it had no landmark near about. He evidently knew all the level crossings on the way and has stated categorically that apart from the two manned crossings from DSH to Noli there are 4 other crossings with no gates. He could not, therefore, have missed the location of Mandoli Level Crossing No's. 1 and 2. In accepting the oral evidence of Shri Bashir Ahmed, there is, however, the difficulty that the guard of his train, Shri Tomar, has given evidence which if accepted would lead to the conclusion that the point of stoppage of 3 UP engine was Mandoli Level Crossing No. II and not Mandoli Level Crossing No. I. This is because he has given the point of stoppage of the engine as K.M. 3/1-2 just after passing the level crossing. He has further stated in Ext. M/16 that before the engine of his train had passed the level crossing at mile 1/22-23, he heard the engine giving the long whistle and noticed that the driver was trying to control the speed. It was at this point that he found on peeping out that a train was approaching from Noli side. According to Shri Tomar's evidence before me it was after his train had gone about two miles from DSH that he had heard the engine giving a long repeated whistle and also noticed the engine of the train approaching from the opposite side. This corresponds roughly to the level crossing at mile 1/22-23 which he has mentioned in Ext. M/16 since there are 24 telegraph poles to a mile. This would also be a point about 3 Kilometers from Shahdara and it follows that according to Shri Tomar's evidence the level crossing about which the engine of 3 UP stopped was the Mandoli Level Crossing No. II which is also the management's case. Coupled with this oral evidence of Shri Tomar, there is the documentary evidence consisting of Ext. M/13, the written message about the occurrence given to the ASM on duty at DSH, the guard's journal Ext. M/14 and the guard's load report for driver Ext. M/15. It is quite true that in so far as the alleged distance between the two engines as given by Shri Tomar is concerned, the evidence can be discarded since this distance is not mentioned in any of the three documents and, admittedly, Shri Tomar while peeping out from the last T.T. in the train was not in a position to judge the distance between the two engines in terms of T.Ps. so that the driver's evidence on this point can be considered as more trust-worthy. As to the evidence of Shri Tomar in regard to the point of stoppage of the engine of 3 UP and the documentary evidence in that respect I cannot help saying that Shri Tomar's oral evidence is entirely untrust-worthy and even the documents prepared by him have to be viewed with suspicion in the light of the observations already made by me about his attitude towards Baljit Singh. Shri Bashir Ahmed has stated in cross-examination before me, that when he reached DSH on the backward journey the guard did not give him the Guard's Load Report for drivers. He even stated quite clearly that although there is a Load Report about the second journey of the 3 UP from DSH, there is no Load Report of the first journey which was interrupted. Since Shri Bashir Ahmed is not a literate person knowing the English language he is not expected to have himself read what was there in the Guard's Load Report for drivers Ext. M/15 even if he signed it. This evidence discloses that he was at least not aware of the contents of Ext. M/15 in so far as they related to the material first journey from DSH to Noli side which was interrupted. As to the written message Ext. M/14 Shri Bashir Ahmed has stated that he could make only an oral report to the S.M. on reaching DSH as to what had happened and that the latter recorded it at that very time. He thus did not deliver any written message to the S.M. or ASM about the occurrence on reaching DSH although he has stated that the guard of his train gave his report to the ASM in his presence. The Guard's Journal Ext. M/14 is primarily a report prepared by the guard. Towards the conclusion of his evidence Shri Bashir Ahmed has stated that after he had orally made a statement to the Station Authority at DSH about what had happened, the latter sent a telegraphic message somewhere but he could not say who that official was. He, however, immediately corrected himself by saying that it was not a telegraphic message but was a message written down on a telegram form which must have been sent by 3 UP but whether it was sent with the Guard or somebody else he could not say. It is, therefore, quite clear that



Shri Bashir Ahmed was not aware of the contents of the written message Ext. M13 and was not even sure who prepared it. In any case the oral report of the occurrence which he allegedly gave to the station authority at DSH could not have been different from what he has stated before me and if there is any variation in the written message as against his oral evidence it must be ascribed to Shri Tomar's version of the occurrence. Shri Tomar has stated in his evidence that on reaching DSH he gave a written message Ext. M/13 about the incident to the ASM after discussing the incident with Shri Bashir Ahmed and that he made a note of the incident also in the Guard's Journal Ext. M/14 after reaching DSH. Both in Exts. M/13 and M/14 there appears the following note:—

"3 Up passenger started from DSH at 08/15 a.m. P. proceed w/o line clear ..... 3 Up (permission to proceed without line clear). But driver stopped 3 Up at K.M. 3/1-2 at 8/22 after giving long whistle again and again frequently as 10 D.N. mixed was seen approaching from Noli side. 3 Up piloted by me immediately to DSH and arrived at DSH at 8/40 hrs. Please note and do needful."

The message Ext. M/13 is dated the 1st January, 1963 and the time given at the top is 8 hours 45 minutes. According to the evidence of MW8 Shri Atma Ram, A.S.M., however he received the memo. Ext. M/13 from Tomar after 9 A.M. It purports to have been sent from DSH and the names given at the bottom are those of driver, Bashir Ahmed, Fireman, Ashiq Ali and Guard of 3 UP, R. D. Tomar at DSH. Admittedly it was prepared by Shri Tomar alone although he calls it a joint treport of himself and Bashir, whose signature also he allegedly obtained on it. No attempt has, however, been made to prove the signatures of Bashir Ahmed, driver on this document although he has been examined as a witness and Ashiq Ali has not been produced. In the Guard's Journal Ext. M/14, the first part of the note at the back is as reproduced above but the second part relates to the return journey from the site of occurrence to DSH and is not relevant except to the extent that the time of re-starting of 3 UP from DSH is given as 9.45. On the front portion of the document the time of departure of 3 UP train from DSH is given as 08/15 and then again 09/45 and the time of arrival also as shown is 08/40. There is also a marginal note on the front side as follows:—

"Driver stopped the DSH train at K.M. 3-1-2 and piloted back to DSH and reached there at 8.40 and again started at 9.45."

Now since the driver, Shri Bashir Ahmed has not anywhere in his evidence, given the number of the T.P. with reference to Kilometers or miles at which he was able to stop his engine or at which he noticed the train coming from the opposite direction except with reference to the Mandoli Level Crossing, it is obvious that the particulars of the T.P. as given in Exts. M/13 and M/14 by Shri R. D. Tomar must be based on his own assessment of the point of stoppage of the engine of 3 UP either from what he was able to see from the last bogie of the train or from what he heard from Shri Bashir Ahmed. If he gave the particulars from his own reading I have already shown that he was not in a position to do so. If it is based on what Shri Bashir Ahmed told him then again it seems to be a deliberate distortion of what Bashir Ahmed might have told him because I have already shown that the conclusion to be derived from Shri Bashir Ahmed's own evidence is quite different. In the Guard's Load Report for driver, Ext. M/15, also there is a note at the back exactly similar to what is contained in Exts. M/13 and M/14 and which I have already reproduced. The same remarks would, therefore, apply to this note in Ext. M/15 as to the notes in Exts. M/13 and M/14. It is, however, to be noted that, according to his own evidence, Shri Tomar prepared and handed over this load report to the driver at Saharanpur after completing the journey from DSH to Saharanpur. The Guard's Journal Ext. M/14 also should normally have been delivered at Saharanpur. There is, however, no evidence on record as to how when and where or by whom the documents Exts. M/14 and M/15 were received. There is also nothing to show that these two documents were even produced at any of the 3 enquiries or even referred to in the evidence there. As to the message Ext. M/13 although Atma Ram Tewari MW8 states having received it from Tomar after 9 A.M. on 1st January 1963 at DSH there is no evidence as to how and by whom it was received from him. In this connection it is significant that in cross-examination Shri Tomar failed to identify even the signature of Shri Bashir Ahmed at the back of Ext. M/15 at point 'A'. It is obvious, therefore, that the documentary evidence as contained in Exts. M/13, M/14 and M/15 is of doubtful value and can be trusted only to the extent to which it is consistent with the oral evidence of Shri Bashir Ahmed. I must say, here, that Shri Tomar appears to me to be a thoroughly unreliable witness. As admitted by him in cross-examination, he was charge-sheeted in July, 1962, vide Ext. W/2, for illegal extortion of money. The charge-sheet also contains a charge of making subsequent alterations in a luggage ticket

to cover up the extortion. Ext. W/3 is an admitted copy of the notice of enquiry into the aforesaid charge which Shri Tomar had received. He has also admitted that the enquiry committee appointed to enquire into the charge found him guilty. Item No. 6 of punishment which is mentioned at the top of the charge-sheet admittedly stands for removal from service. In the endorsement below the notice of enquiry Ext. W/3, there is a reference to Shri Tomar's allegation that it was Shri Baljit Singh Sharma, S.M. Noli who had instigated the passenger complainant Fateh Singh to lodge this complaint against Shri Tomar. In connection with this allegation Baljit was actually made to appear before the enquiry committee, at the instance of Shri Tomar. In cross-examination also Shri Tomar has admitted that during the aforesaid enquiry he had expressed a suspicion that Baljit had incited the passengers concerned to make the complaint against him. In these circumstances it is not unlikely that Shri Tomar when he got an opportunity to prepare certain official documents or to give oral evidence relating to the present occurrence attempted to settle old scores against Baljit. Shri Tomar has also admitted that while he was posted as a booking clerk at Baoli in 1959-60 he was charge-sheeted for having stolen a station bell and for having sold it to a 'Kabari' (junk-dealer). Following an enquiry into this charge Shri Tomar was admittedly demoted from the post of booking clerk to that of a Ticket Collector for one year and his increment was also stopped for one year. There is thus sufficient evidence not only of Shri Tomar's malice against Baljit but also of his general untrust-worthiness.

42. I now come to the evidence of the two other important witnesses on this point namely the driver and guard of the 10 Dn. train. Shri Rahim Bux, MW1 driver of that train has stated before me that the train reached Noli station from Saharanpur side at 8 A.M. on 1st January 1963 and left Noli station at 8.05 A.M. under a T9H which means permission to proceed without line clear. The "programme" which was in force, due to the telegraph line between Shahdara and Noli being out of order, was given to him by pointsman Shri Ram Pershad. After the train had left Noli and was near the telegraph pole 3/7 k.m., the witness noticed some smoke coming out in front at a distance of 5-6 telegraph poles. On noticing the smoke he suspected that there might be something wrong and immediately afterwards he was able to see the engine of a train which was coming from the opposite direction. The witness immediately stopped the steam of his engine, applied hand-brakes and the steam brakes and started blowing the whistle and was able to stop his engine between 3/4 and 3/5 k.m. poles. According to the witness, the distance between his engine and the engine of the train coming from the opposite direction was about 3 k.m. poles when he was able to stop his own engine. At that stage the engine of the 3 UP had also stopped and had started going back. Exts. M/1, M/2 and M/3 are respectively the statements that this witness made before the enquiry committee Nos. 1, 2 and the domestic enquiry. These statements are more or less similar to the one made before me except that in Ext. M/1 as also in Ext. M/3 he stated that it was while he was near K.M. 3/7 that he noticed a train coming from the DSH side and immediately opened the whistle and shut up the steam and applied steam brakes while before me he has stated that at K.M. 3/7 he only noticed the smoke coming out in front at a distance of 5-6 telegraph poles and that immediately afterwards he saw the engine of a train coming from the opposite side. As his first statement Ext. M/1 was made on the 2nd January, 1963 soon after the occurrence it is more likely to be correct if he was in a position to note the T.P. numbers in such a situation. It seems to me, however, that the truth, as stated by Bashir Ahmed, MW3, driver of 3 UP is that when faced suddenly with such a critical situation hardly any engine driver would be in a mood or position to note the T.P. numbers and his only concern would be to stop the engine. In cross-examination the witness has stated that by the time he was able to stop the train it must have traversed a distance of 14 to 20 poles. This means that the engine should have stopped at T.P. 3/5 K.M. assuming that the witness did actually observe these things.

43. Shri R. K. Khanna, MW2, who was the guard of 10 Dn. train, on the relevant date has stated that at k.m. 3/8 his engine driver gave a long whistle and tried to stop the train and was able to stop it between 3/5 and 3/4 k.m. poles. The witness then got down after closing his brake-van and while he was proceeding to the engine he heard passengers observing that another train was coming from the opposite direction. In the meantime he saw a train moving backwards on the opposite side which was the 3 UP train. This witness also states that the distance between the engine of his train and that of the 3 UP when he observed it, might have been about 3 T.P.s., which, however, is only an estimate he formed as he was not then in a frame of mind to assess the precise distance. On reaching the engine of his train he clearly saw the 3 UP train moving backwards. He then directed his driver to wait for ten minutes before

moving on further in order to enable the 3 UP to reach DSH. After the 10 minutes had expired he gave a direction to the driver to move at a speed of 5 miles per hour with constant blowing of the whistle. On arrival at Shahdara he prepared his report Ext. M/4 which is the guard's train journal and which was handed over to the Station Master DSH. He also prepared at the same time the Load Report for drivers Ext. M/5 which he handed over to his driver, Shri Rahim Bux. Exts. M/6, M/7 and M/8 are respectively the statements that this witness made before the enquiry committee Nos. 1, 2 and the domestic enquiry and they are more or less similar to the one made before me in respect of what has been stated above. In the Guard's Journal Ext. M/4 and Guard's Load Report for drivers Ext. M/5 there is the following note at the back, signed in each case by the witness:—

"10 DN mixed started ex No. at 8/05 Hrs. on P.P. No. 29 under Programme Issued by S.M. Noli on duty. Driver 10 DN stopped at K.M. 3/5 and 3/4 after giving at long whistles as he noticed that 3 UP Passenger is coming. We started from there after 10 minutes to give enough margin for 3 UP to return back. Train arr. at DSH 8/50. A.F.O. was also with the train. Please note."

It will be seen that in none of these notes is the distance between the two engines given. It is thus only in oral evidence before the enquiry committees and before me that these two witnesses gave their estimate of the distance between the two engines at the point of stoppage. A reference to item (vi) of my inspection note will show that at the point between T.Ps. 3/4 and 3/5 where Shri Rahim Bux, driver of 10 DN is stated to have stopped the engine, some T.Ps. were visible towards Noli side but none were visible towards Shahdara. From Item (v) of the inspection note also it will be seen that from the Mandoli Level Crossing No. 2 also no T.Ps. are visible towards the Noli side except perhaps T.P. 3/3. The reason for the non-visibility at this point as given in the inspection note is that there are here numerous trees on both sides. It is obviously for the same reason that no T.Ps. are visible from the point of stoppage of 10 DN, between 3/4 and 3/5 T.P., towards the DSH side. According to the inspection note, the weather, on the date of inspection, was bright and the visibility along the track was quite long at the moment. According to the evidence of Rahim Bux, MW1, however, the weather on the date of occurrence was slightly foggy. In the report Exts. M/4 and M/5 also the weather is stated to have been foggy. If as stated in these two documents the weather was really foggy, it is all the more reason why the T.Ps. towards Shahdara side should not have been visible to the driver of 10 Dn, and much less to its guard from the point of its stoppage. Shri Khanna has stated that the estimated distance of 3 poles between the two engines which he had given in his evidence was noted while he was in the Brake-van and that he did not notice the distance after reaching his own train's engine because the engine of the 3 UP train had already started moving backward. Therefore, the evidence of this witness as to the distance between the two engines is of little value and even the evidence of Shri Rahim Bux as to the number of T.Ps. between the two engines cannot be accepted as a reliable estimate in view of the fact that the T.Ps. towards Shahdara side could not have been visible to him even in clear weather and much less so in foggy weather. The fact that the distance between the two engines is mentioned neither in Ext. M/4 nor in M/5 also lends support to this conclusion. That the distance between the two engines could not have been as short as is sought to be made out by these witnesses, also seems to find support from another circumstance. Shri Rahim Bux, driver has stated, in his evidence, before me that the whistle of an engine like the one which he was driving would be heard at a distance of about one mile and that he heard no whistle from the opposite side at the time of the occurrence nor did he hear any sound of the blowing of a whistle earlier as he was too busy in driving his engine. He gave the first whistle at the Whistle Board which is about four Kilometers from DSH side and he gave the second whistle soon afterwards when he noticed the smoke rising from the opposite side. He has stated further on, that on that day due to the foggy weather he was blowing the whistle not only at the level crossing gates as usual but also at minor railway crossings while passing a village. It is also in the evidence of Shri Bashir Ahmed, MW3, that on noticing the smoke and the engine opposite, he immediately opened the whistle. Further on he has stated that he had already given a whistle as the Mandoli Level Crossing was approaching and immediately afterwards he noticed the smoke of the engine opposite but he did not hear any whistle from the engine in front. He has explained that during his own whistle he could not have heard any whistle from the opposite side but before that also he did not hear any sound of a whistle from the opposite side. Further on, he has stated that he was not able to hear any whistle from the opposite side even after he had stopped his own engine and was backing it. Although he has explained

that the reason for this might be that he had not stopped blowing his own whistle and could not have heard any other sound of a whistle while his own was blowing, it seems to me highly improbable that none of the two drivers of the opposing trains should have heard his opposite number's whistle if the distance between the two engines at the point of stoppage had been as short as 3 T.Ps. as stated by Rahim Bux or even 6 T.Ps. as stated by Shri Bashir Ahmed. If, as stated by both these drivers, they were constantly or at least frequently blowing the whistle at the relevant time each of them should have heard his opposite number's whistle at least once unless the distance between the two engines was not short enough to enable the listening of a whistle. That also makes it much more probable that the point of stoppage of the 3 UP engine was at Mandoli Level Crossing No. 1 as earlier found by me and not at Mandoli Level Crossing No. 2. In the former case the distance between the two engines would be more than one Kilometer and of course much more than a quarter of a mile, thus taking this occurrence out of the definition of an averted collision.

44. Lastly, on this point I must refer also to the evidence of Shri Bharat Singh, MW10, who was the Station Master of DSH at the relevant time. He has stated that on coming to know of the occurrence, he informed the D.T.S. at Saharanpur, Shri K. Mittal before 9 A.M. by trunk telephone as the Control Telephone was out of order. On learning from him about the occurrence Shri Mittal asked him to issue an accident message in writing and to collect the papers. Further on he has stated that he did send a message as directed by the DTS and that Ext. MW9/2 is the accident message which he sent. This message was prepared on the basis of the information that was given to the witness by the guards and drivers of the trains concerned. Shri Mittal has, however, not been examined before me by the management to prove what message, telephonic or written, was actually received by him (if at all) from Shri Bharat Singh. The written message Ext. M/13 as shown above, is stated to have been sent already at 8.45 A.M. and I do not know whether there was any occasion for the sending of a fresh written message on the same facts and based on the same information at 9 A.M. The written message Ext. M/13 was also prepared by the station authorities, according to Shri Bashir Ahmed. It is surprising that in the two statements of Shri Bharat Singh Exts. MW10/1 and MW10/2 made respectively at the second and the third enquiries, there is no mention of such an important document as the alleged accident message Ext. MW9/2. The mention of this message appears for the first time in the evidence of MW9. Shri J. K. Sama, an Additional Traffic Inspector who has referred to the documents collected by him at Noli on his way from Saharanpur on 1st January 1963. He has stated that he reached Noli from Saharanpur at 21 hours on 1st January 1963 under instructions from the Superintendent of the Railway to collect certain papers regarding the occurrence from the Noli Station. He accordingly collected certain papers from the Station-master on duty Shri Baljit Singh Sharma at Noli of which he has given a list in examination-in-chief. These are seven documents inclusive of one Log Book. He also proceeded to Saharanpur and there also he seized papers from the Station-master on duty and prepared a list. It was only in answer to a question by the Tribunal that he stated that there were certain papers attached to the books which he seized at Noli Station but could not say whether the documents Exts. MW9/2-9 were pinned to the Log Book or any other book which he seized. He has further stated that Ext. MW9/10 is an inventory of the documents seized by him from DSH and Noli, the list on the left side being that of documents seized from DSH and the list on the right that of documents seized from Noli. Ext. MW9/10 appears to be a carbon copy and the original list on the left side of this document in carbon is of seven documents only. There is, however, an addition of an eighth item written in ink as follows:—

“Log Book and messages of 1st January 1963.”

Evidently this item is a subsequent addition to the list but does not bear anybody's initial. In cross-examination the witness has stated that he got the information about the accident on 1st January 1963 at Saharanpur about 9 A.M. on the Control Phone and it was only accidentally that he heard that information. He then made an enquiry as to where the accident had taken place and somebody told him either from Baraut or Shahdara that it was between Noli and Shahdara. The witness then went to the superintendent immediately and could see both the DTS and Superintendent at about 10 A.M. Further on he has stated that on seizing the papers he did not particularly inspect them. He might have seen some of the papers but did not remember which. He simply prepared a list. As to the document Ext. MW9/2 itself it contains several over-writings in crucial matters. For instance at point 'A' against the mileage of accident, there appears the figures “3/4-5 and 3/1-2” but the digit “5” is over-written and so is the digit

"3" after the word "and". It might as well have been 2/1-2 originally. Then again under the column of "particulars of accident", there appears the following sentence:—

"Averted collision took place between Noli and DSH at K.M. 3/1-2 and 3/4-5."

Here also at point 'B' there is over-writing in the digits "1" and "2" and also in the digit "4". It is also surprising that, in this document, at that early stage there should have been a description of the occurrence as "averted collision" in two places, one in the body of the report under particulars "accident" and another against the "cause of accident". When cross-examined on this point Shri Bharat Singh, MW10 tried to explain that he used the expression "averted collision" in the sense that when two opposing trains happened to move on the same railway track and an accident is somehow avoided then it is an "averted collision" and he used this expression in spite of the fact that it had not been used in the report of the guards of either the 3 UP or of the 10 Dn. He himself did not make any enquiries about the distance between the engines of the two trains at the time when the accident was averted. From the circumstances under which this document has been produced before me and from its nature and the nature of the evidence relating to it, it appears to me to be extremely doubtful if the document was prepared on the date and at the time mentioned in it and, to say the least, I am unable to attach any value to this document. As already shown by me it appears to be much more probable from the documentary and oral evidence discussed by me above that the distance between the two engines at the relevant time was much more than a quarter of a mile. But even if the evidence of Shri Bashir that the distance between the two engines was 6 T.Ps. be taken at its face value then too it means that it is equal to one quarter of a mile since the distance covered by 6 K.M. T.Ps. comes to a quarter of a mile. If one has to choose between the evidence of Bashir Ahmed, MW3 and Rahim Bux, MW1, the drivers of the two trains, who as shown by me are the only witnesses who could have given material evidence on the point, then I would certainly prefer the evidence of Bashir Ahmed for reasons already explained. Even in the evidence of Rahim Bux in Ext. M/1 and also in Ext. M/3 before the enquiry committees, it is stated that when he first noticed the train opposite, it was at a distance of 5-6 telegraph poles and if he was able to stop his engine within 1 or 2 poles then it is not unlikely that the distance between the two engines according to his first estimate could be about 4 poles. In an estimate formed in such a situation there is always a likelihood of an error this way or that way and the evidence even if it is taken at its face value and is not motivated by other considerations cannot be judged so rigidly. If a benefit of doubt is to be given in a matter like this it should be in favour of the person accused. I am, therefore, unable to hold as established that on the 1st January, 1963 the two engines were at any time within a quarter of a mile of each other.

45. The learned representative of the workmen, Shri Y. D. Sharma, has attempted, not unsuccessfully, to prove in another way also from the record of evidence of the management's witnesses and from documentary evidence that the engine of 3 UP train when it was stopped or when its driver saw the smoke from the engine opposite could not have been at Mandoli Level Crossing No. 2 and that it is more probable that it should have been at Mandoli Level Crossing No. 1. This Shri Sharma has tried to prove by a reference to the timings of various events given in oral and documentary evidence. According to the uncontested evidence of both Shri Bashir Ahmed, MW3 the driver of 3 UP train and of its guard Shri Tomar, MW4, the train started from Shahdara at 08.15 A.M., on the authority of a form T9G supplied by the Station-master on duty instead of a line clear since the programme system was in force owing to the telegraphic communication between DSH and Noli being out of order. This is also the time of departure of 3 UP train as given in the documents Exts. M/13, M/14 and M/15 which are respectively, the written message, the guard train journal and the guards' load report for drivers. According to a direction contained in the form 'T9G' Ext. W/6, the driver is to proceed cautiously without Line Clear and he is authorised to proceed at a speed not exceeding 10 miles per hour by day when the view is clear or 5 miles at night or when the view is obstructed making free use of his whistle. Since it was day time the driver in this case could not have exceeded the speed of 10 miles per hour. Bashir Ahmed has actually stated in examination-in-chief that he was moving at a speed of

10 miles per hour. In cross-examination he has stated that while moving out of DSH Station his speed might have been 5-6 miles per hour which developed to 10 miles at the level crossing on the G.T. Road, the first level crossing from DSH side. Shri Tomar has also stated that while backing, the 3 UP train was not exceeding the speed of 5 miles per hour and that is also the maximum speed for backing according to the rules. He has further stated categorically that he had noted the time of stoppage of the train between Noli and Shahdara as 8.22 and that a train takes a minute or half to put it in reverse gear after it has stopped. That is why he gave the time of backing also in his report Ext. M/13 as 8.22. The time when the train reached the Shahdara Station outer signal was 8.30 which also he noted then and there. Shri Bashir Ahmed has, however, stated that he was not in a mood at the time of the occurrence to note the time of stoppage of his engine or of its backing. In the relevant documents Exts. M/13, M/14 and M/15 also the time of stoppage is given as 8.22. This means that the train had travelled for 7 minutes from DSH, after leaving that Station, upto the time of the stoppage of the engine. At the rate of 10 miles per hour, which is equivalent to one mile per six minutes, the engine could, therefore, have travelled not more than  $7/6$  miles from DSH at the time when the engine stopped. Since 8 Kilometers are equal to 5 miles, this means that, at the time of stoppage, the distance from the point where the engine started at DSH should have been as follows:—

$$7/6 \times 8/5 = 28/15 \text{ Kilometers}$$

$$= 1 \text{ Kilometer and } 13 \text{ T.Ps.}$$

(There being 15 T.Ps. to a Kilometer).

Assuming that the train was about 2 T.Ps. long the engine was at about 2 T.Ps. when it started from the Station. This would mean that it should have been at 2 K.M. at the point of stoppage. This corresponds almost exactly to the location of Mandoli Level Crossing No. 1 (at K.M. 2/1), vide my inspection note, Item (iii). This calculation is based on the maximum speed of 10 miles per hour but this speed according to Shri Bashir Ahmed's evidence could only have been developed at the first level crossing which is the G.T. Road Level Crossing upto which the speed was only 5-6 miles per hour. The average speed upto the point of stoppage would therefore, be a little less than 10 miles and, if the timings of departure from DSH and of the stoppage of the train at the time of occurrence be correct, then the engine of 3 UP could, in no case, have been beyond the Mandoli Level Crossing No. 1. It is to be remembered that according to the evidence of Shri Bashir, when he was able to stop his engine, it had crossed the Mandoli Level Crossing and had gone to a distance of between  $\frac{1}{2}$  and 1 telegraph pole beyond that crossing. This means that it should have been between 1 and  $2/2$  K.M. T.Ps. The evidence of the timings therefore makes it highly probable that the 3 UP engine stopped near about the Mandoli Level Crossing No. 1. If it had stopped, as stated by Shri Tomar, near the Mandoli Level Crossing No. 2 at K.M. 3/1 which means a distance of about 2 miles then the time of stoppage of the engine should have been  $8.15 + (2 \times 6) = 8.15 + 12 = 8.27$  A.M. and not 8.22 A.M. The management's case as appearing from the evidence of Shri Tomar is, therefore, inconsistent with the timings of departure and stoppage of 3 UP as given in the oral and documentary evidence of the material witnesses. In this connection, it is also to be noted that, according to the admission of Shri Bashir, the Railway Engines Driven on this line have no speedometers or Milometers and it is only on the basis of observations and experience that the engine drivers estimate or vary the speed. Calculations based on speed estimates have, therefore, to be necessarily approximate.

46. Then again, considering the return journey of 3 UP, it is in evidence, as already stated, that the engine stopped and started backing at 8.22 hours. It is also in Shri Tomar's evidence that on the back journey the train stopped at outer-signal of DSH at 8.30 A.M. The same is the time noted in the documents Exts. M/13, M/14 and M/15. According to my inspection note item No. (i), the outer-signal is at T.P. 0/12 from DSH. Shri Tomar's evidence is that a train while backing cannot exceed a speed of 5 miles an hour and the rule must have been observed while the 3 UP was backing. This speed is equivalent to 1 mile per 12 minutes. In the backward journey of 8 minutes, therefore, the 3 UP engine could not have travelled more than  $8/12$ th or  $2/3$ rd of a mile which means 16 T.Ps., there being 24 T.Ps. to a mile. Since the outer-signal is at 0/12 T.Ps., the distance of the engine from DSH at the point of stoppage on backward journey should have been 14 T.Ps., assuming the length of the train to be about 2 T.Ps. The total distance of the engine from DSH at the point of stoppage, on the direct journey to Noli should, therefore, have been  $16 + 14 = 30$  T.Ps. = 2 Kilometers, there being 15 T.Ps. to a Kilometer. On the basis of this calculation

also the point of stoppage of 3 UP engine at the relevant time comes to about 2 K.M's from DSH which is the approximate location of the Mandoli Level Crossing No. 1, *vide* my inspection note.

47. There is a similar inconsistency in the timings of the 10 Dn. train as given by Rahim Bux, MW 1 and R. K. Khanna, MW 2. The train started from Noli at 08:05 A.M. under T9H *vide* evidence of both these witness. It stopped on the way at 8:20 hours according to MW 1 and at 8:22 hours according to MW 2. Since MW 1 says, he did not see the time when the engine stopped and saw it only when the guard came to him from the brake-van, I consider Shri Khanna's (MW 2) evidence more acceptable on this point as he had allegedly noted the time from his brake-van when the train stopped. The train had, therefore, travelled for 17 minutes from Noli. According to both MW 1 and MW 2, the speed of the train was about 7 miles per hour. Therefore in 17 minutes the engine should have travelled  $\frac{17 \times 7}{60} = \frac{119}{60}$  or approximately 2 miles from Noli. The distance between Noli and DSH is stated to be  $5\frac{1}{4}$  miles or 5 miles 6 T.Ps. Therefore, the point of stoppage of the 10 Dn. engine should have been 3 miles and 6 T.Ps. from DSH which means 5 Kilometers and 3 T.Ps. as against  $3\frac{4}{5}$  Kilometer T.Ps. according to the evidence of MW 1 and MW 2. This means a difference of as much as 2 Kilometers between the distance from DSH based on the direct observations of the Site by MW 1 and MW 2 and the distance calculated from the timings of departure and stoppage of 10 Dn. given by them. Either, therefore, the timings or the speed noted must be incorrect or the point of stoppage as given in evidence is grossly incorrect. If the point of stoppage of 10 Dn. calculated from the above timings be assumed to be correct then the distance between the two engines at the relevant time should have been atleast 2 Kilometers, on the basis of even Tomer's evidence, according to which, his engine stopped at  $3\frac{1}{4}$  Kilometer, T.Ps. In no case, therefore, could the distance between the two engines have been anywhere near  $1\frac{1}{4}$ th of a mile.

48. I have, therefore, no doubt that it was not a case of "averted collision", and it could only have been a case of "block irregularity". Shri Y. D. Sharma has argued that the distance of  $1\frac{1}{4}$ th of a mile laid down for an "averted collision" can be applicable only to a situation in which there is normal running of the opposing trains and not to a situation where, as in the present case, the trains were running under the "programme" system at a speed of 7 to 10 miles per hour and the engines could be stopped within one or two T.Ps. after noticing the train opposite. It is difficult to accept this argument. I cannot, however, help observing that the actual distance between the opposing engines in such situations must depend more or less on what the drivers or the guards of the opposing trains are able to do at the spur of the moment and so far as the station staff is concerned their responsibility really should consist in rightly or wrongly allowing the respective trains to leave the station. Once a train has left the station rightly or wrongly there is little or nothing that the station-master can do to avert a collision.

49. I now come to the second point to be considered on the merits of the case which is as follows:—

"Whether Shri Baljit was justified in permitting the 10 Dn. train on the date of occurrence to proceed from Noli without the prior arrival of the 3 UP train at Noli, in accordance with the programme?"

As already stated the management's case is that Shri Baljit was bound to confirm to the "programme" as issued from Noli by his A.S.M. and had no authority to allow the 10 Dn. train, which was the 4th in the programme to leave that station without the prior arrival of the 3 UP train, which was the 3rd in the programme and which under the programme was to cross the 10 Dn. at Noli. The relevant Rule 2(c) of appendix 'A' of Chapter IV of the Railways General and Subsidiary Rules, Part I and II runs as follows:—

(c) "Station Masters at C and D of the two Stations (between which communications have failed) must now work all trains in order of priority of timings in the time-table irrespective of the actual running times at the time the failure occurs."

50. The union's or rather Baljit's defence of his action rests on proof of the following allegations:—

(1) Since the 1 UP train had not arrived at Noli in time, the A.S.M. Noli in consultation with Baljit (S.M.) had sent a special messenger to

S.M., DSH to enquire about the power position or rather the position of Up trains and had, in reply, got a written message from S.M., DSH which, according to Baljit, amounted to an assurance from the latter to the effect that, due to non-availability of engine the 3 Up train would not be started from DSH unless 10 Dn. train from Noli had reached there,

- (ii) the original copy of the "programme" sent from Noli which was with the S.M., DSH was actually returned by him to S.M., Noli with the 1 UP train, "to enable" S.M. Noli to start 10 Dn. train first for DSH.

In this connection Shri Baljit stated on 2nd January, 1963 before the first enquiry committee vide MW 12/4-A that at about 5-30 hours he received intimation through Gotra that A.L.O. from Saharanpur was enquiring regarding the position of engines and when he gave the information that telegraph communications between Noli and DSH were out of order, he was advised through Gotra to send a man on cycle to DSH for necessary information and position of trains, since 1 Up also had not arrived by that time according to the scheduled time of arrival. The witness then asked Pointsman, Bishamber to proceed to DSH at 6-00 hours on cycle with messages,

- (i) regarding demand of relief engine for goods train (owing to the failure of the engine of the goods train at Noli which was standing there), and  
(ii) regarding the position of Up trains to be obtained in writing from the S.M. on duty at DSH so that there might be no trouble in starting trains.

The witness then left for his quarter at 6-15 hours and heard that 1 Up had arrived at the station at about 7-13 hours. The witness reached the station again and found that Guard R. P. Singh had brought from DSH the copy of the "programme No. 1" issued by A.S.M. Noli. The guard allegedly made over the copy of the programme, saying "your programme has been returned by DSH". At 7-50 hours Pointsman, Bishamber returned from DSH on cycle and brought the acknowledgment of messages delivered by him at DSH to A.S.M. on duty and also brought the written assurance as to the position of 3 Up train. According to the witness, the S.M. on duty at DSH had intimated that there was no arrangement for departure of 3 Up from DSH unless 10 Dn. mixed was received at DSH. The witness at this stage observed that it was then very clear that for the same reason the S.M., DSH had returned the programme to Noli so that 10 Dn. train may be started from Noli to DSH. The witness was, therefore, satisfied as to the justification of starting 10 Dn. from Noli on what according to him was the written assurance of S.M., DSH that unless 10 Dn. reaches DSH no Up train will start from there. Moreover since the original copy of the programme on which the trains were being worked had been returned by DSH to Noli, the DSH station authorities could, in no circumstances, start the Up train in the absence of the programme. He also felt convinced that there was no engine for 3Up at DSH and the engine of 10 Dn. was expected to be utilised for 3 Up. In other words, the engine of 10 Dn. was to be sent as a relief engine for 3 Up passenger. This statement was confirmed by the witness at the second enquiry. In his evidence before me Shri Baljit has affirmed that he stands by the statement Ext. MW 12/4A made before the first enquiry committee.

51. Shri Ramnath Sharma, ASM on duty at Noli at the relevant time was not examined before me but was examined by the Enquiry Committees. His statement dated the 2nd January, 1963 before the first enquiry committee is Ext. MW 12/1A. He also stated therein that the special goods train from DSH arrived late at Noli at 2-10 hours and that the driver of the train gave him in writing that he would not be able to proceed with that engine and also asked for a relief engine. At 2-30 hours he discovered that the train wire between Noli and DSH was interrupted and tried to pass the message via Gotra. 8 Dn. arrived at 2-58 hours but when he could not get line clear from DSH by any means, he made out a programme and started 8 Dn. under programme system of working. He sent one copy of the programme for S.M., DSH through Guard of 8 Dn. for which he got signatures of the Guard and then contacted Baljit Singh Sharma, the S.M. and on his arrival at the Station he prepared an accident message of the goods train. Through Gotra the witness came to know that A.L.O. from Saharanpur was asking for somebody being sent to DSH for the relief engine and also to enquire about position of up-trains from S.M., DSH. Accordingly at 6-00 hours the witness sent



Pointman, Shri Bishamber, to DSH alongwith 3 messages to make enquiries according to A.L.O.'s instructions received through Gotra. Shri Bishamber returned from DSH at about 7.50 hours. The first question that the witness was asked by the enquiry committee was with reference to the following entry in the Diary of 7.50 hours on 1st January 1963 while handing over charge:—

"P. man Bishamber was sent at 6 hrs. on cycle to DSH with 3 messages and he was instructed to bring the position of 1 Up and 3 Up in writing. The written assurance of ASM DSH is herewith to start 10 Dn. first."

The witness was asked by the committee to show the written assurance of ASM, DSH to start 10 Dn. first. The witness replied that ASM, DSH Shri J. K. Sharma had sent a written message which he considered as a sufficient assurance for starting 10 Dn. first and further stated that since the ASM, DSH returned his copy of the programme through the guard of 1 Up train and made this remark in the log book, this was treated as adequate assurance for starting 10 Dn.

52. In his statement Ext. MW 12/1 before the domestic enquiry committee on the 17th April, 1963, Shri Ramnath Sharma first replied in the negative to a question whether the programme sent by him to DSH through the guard of 8 Dn. had been returned to him from DSH but on cross-examination by Shri Baljit he admitted that the original programme sent by him to DSH was returned to Noli through Shri Rampal Singh, guard of 1 Up train and was received by him in the presence of Shri Baljit. He further stated that Shri Rampal Singh told him that this was the programme returned by DSH. He also stated that Shri Rampal Singh had told him that 1 Up had arrived late at Noli because there was power shortage at DSH and the engine of 3 Up was used for 1 Up, the engine of 1 Up having failed. Shri Rampal Singh is further stated to have told the witness that there was no other engine available for 3 Up.

53. Bishamber Singh, the Pointsman was also examined by the second enquiry committee. He stated in Ext. MW 12/3A that at about 5.30 hours, Shri Baljit called him to the station and asked him to carry 2-3 wires to DSH Station. At about 6.10 hours the witness left Noli Station for DSH on a cycle and on reaching there at about 7 hours he handed over the wires to ASM, Shri J. K. Sharma. Both the ASM and S.M., Noli had directed him to enquire from DSH as to why 1 Up train, was coming late and also about 3 Up train and the witness was also asked to ascertain the position about the relief engine of goods train. The witness obtained the signatures of Shri J. K. Sharma in the log book as a proof of delivery of the messages which he had brought and requested Shri J. K. Sharma to tell him about the position of 1 Up, 3 Up and the relief engine for the goods train. Shri J. K. Sharma is stated to have told him that 1 Up had already left and that he had received information from Loco that there was no power at DSH for the relief engine for goods train. Shri J. K. Sharma is also stated to have told him that 3 Up will start when 10 Dn. will come to DSH. The witness requested Shri J. K. Sharma to give something in writing whereupon the latter wrote in the book he had brought from Noli and which he took with him and handed over to Shri Baljit Singh Sharma. On reaching Noli he is stated also to have told the ASM and S.M. that there was difficulty of power at DSH and that the 3 Up will leave after arrival of 10 Dn. In cross-examination by the Committee he stated that so far as he could remember, the ASM, Shri J. K. Sharma had only expressed difficulty about power position at DSH and whatever he said he gave in writing in the book which the witness carried back to Noli Station. He also admitted that Shri J. K. Sharma did not tell him in express terms that unless the engine of 10 Dn. came, 3 Up could not be started from DSH or that 10 Dn. engine will work 3 Up train. In his statement Ext. MW 12/3B before the second enquiry committee, he confirmed what he had stated before the first enquiry committee but in cross-examination he denied that when he was sent by S.M. Noli to DSH with 3 messages, he was asked to make further enquiries regarding power from S.M., DSH on duty and stated that he was only asked to find out the position regarding the power for special goods train and for 1 Up, and there was no mention regarding the power for 3 Up or for movement of 10 Dn. by the S.M. Noli. In his statement Ext. MW 12/3 before the domestic enquiry committee however Shri Bishamber Singh once again stated that he had been asked by S.M. Noli not only to request DSH to arrange for power for the goods train standing at Noli but also to enquire about the running of 1 Up and 3 Up trains from DSH. He, accordingly, made these enquiries from Shri J. K. Sharma who told him that it would not be possible to supply power for the goods train standing at Noli and further that the engine for 1 Up at DSH had also failed and they were utilising the engine of 3 Up for 1

Up train. Shri J. K. Sharma also made a note about the engine position in the log book.

54. The Log Book in question is Ext. M/28 and it contains the following note which has been marked by me as 'B':—

"SM. No

As per Shedman, DSH there is no arrangement for 3 Up Passgr. engine till 10 Dn. comes here.

Sd./- J. K. SHARMA,

01/01/63

07/00"

Shri J. K. Sharma's statement dated 2nd January, 1963 made before the first enquiry committee is Ext. MW 12/ 5A. He stated therein that 8 Dn. arrived late at 4-15 hours with permission to proceed under T9G under programme system of working, and the guard of that train handed over to him the programme made out and given to him by A.S.M., Noli. There was delay in arrival of the engine for 1 Up from the Shed and, ultimately on its arrival, 1 Up train was sent under the programme system at about 6-50 hours. At about 6-45 hours, Pointsman, Bishamber came from Noli Station and brought a message from the driver of goods train standing at Noli asking for a relief engine. The witness on receiving advice from the S.M. went to Shedman, DSH to inform him about the position and also "for the power of 3 Up" which was due to start at 7-15 hours. The shedman is stated to have told the witness that he was finding great difficulty in supplying power for 3 Up train and that unless 10 Dn. arrived at DSH it was out of question for him to send any relief engine for the goods train. He then returned to the Station. In regard to the note marked as 'B' in the Log Book Ext. M/28 reproduced above, the witness on being asked by the committee whether he had written it admitted that he had written and signed it. On a further question as to why he gave this information to S.M. Noli, he replied that he gave the information "as Shedman, DSH informed" him. It was pointed out to the witness by the committee that, while in his evidence before the committee he had stated that the Shedman told him that unless 10 Dn. train came, the question of sending relief engine for goods train did not arise, he had on the contrary informed S.M. Noli through the message in the Log Book that till 10 Dn. comes no arrangement for 3 Up power could be made. On being asked which one of the statements was correct, he replied that he wanted to communicate to the S.M. Noli that unless 10 Dn. arrived no relief engine for goods train could be sent but in the hurry, he had wrongly mentioned 3 Up power in the information sent to Noli, instead of power for relief engine. He further stated in reply to another question that he did not mean by the note that S.M. Noli should start 10 Dn. train otherwise 3 Up Passenger could not start. He also denied that he had given any assurance in any form to S.M. Noli that 3 Up train would not be started until such time as 10 Dn. arrived at DSH. In his statement at the second enquiry marked as Ext. MW 12/5B made on 11th January, 1963, however, this witness re-affirmed that when he went to the Shed at about 7 A.M. on receipt of a message from Noli enquiring about power position for the goods special and the 3 Up train, Shri B. N. Kundu informed him that due to engine trouble he could not give any definite indication for power regarding 3 Up and goods special.

55. It is quite true that Shri J. K. Sharma made contradictory statements at the various enquiries regarding the meaning of his note marked as 'B' in Ext. M/28 and as to what the Shedman had told him but there can be no doubt about the authenticity of the note which he admittedly wrote and signed. In that note there is a clear statement that there was no arrangement for 3 Up passenger engine until 10 Dn. came to DSH and this was based on what he understood from the Shedman. In whatever way this note might be attempted to be explained away and whatever might have been the meaning or intention of Shri J. K. Sharma in writing this note, what is material is that it could have only one meaning for the Noli station authorities to whom it was addressed and that meaning could only be that an engine could not be provided for 3 Up passenger until 10 Dn. arrived at DSH. Whether the message from Noli making the enquiry should have been in a prescribed form or should have been a written or verbal message is, to my mind, not material in the circumstances of the case. The evidence of Shri Bishamber, Pointsman also corroborates essentially, Shri Baljit's version of the episode and there is also corroboration by the entry in the Diary at Noli regarding the sending of Bishamber to DSH and as to the reply he brought. There may be some contradiction regarding the verbal directions that were given to Shri Bishamber for making enquiries from DSH and as to what verbal replies he got to those enquiries

at DSH but the documentary evidence is quite conclusive and specific as to the essence of the matter. In fact, the second enquiry committee in its findings contained in para. 3 of the document Ext. M34A dated the 11th January 1963 made the following observations:—

"He (Shri J. K. Sharma) is also responsible for giving the incorrect information to the Station-Master Noli regarding the power position for 3 Up train at Delhi-Shahdara."

The committee's reasons for the findings contained in Ext. M/34, contain the following pertinent observations:—

"The A.S.M. on duty at Noli, Shri R. N. Sharma had sent his Pointsman, Shri Bishamber at 6.00 hrs. on 1st January, 1963 by a cycle to DSH with 3 messages to be delivered at DSH duly entered in his Log Book. According to his statement the Pointsman was sent to find out about the position of the relief train and to enquire about Up trains as asked for by the A.L.O. through a message conveyed via Gotra. These 3 messages entered in the Log Book related to the failure of the engine at Delhi-Shahdara, Shri J. K. Sharma had given the following information:—

"SM NO

As per Shedman DSH there is no arrangement for 3 Up Passenger engine till 10 Dn. comes here."

This note was received by A.S.M. on duty at Noli at 7.50 hrs. S.M./Noli, Shri Baljit Singh Sharma took over charge at 7.50 hrs. from Shri R. N. Sharma, A.S.M. who recorded a note as below in the Station Diary:—

"P/man Bishamber was sent at 6.00 hrs. on a cycle to DSH with 3 messages and he was instructed to bring the position of 1 Up and 3 Up in writing. The written assurance of A.S.M./DSH is herewith to start 10 Dn. first."

....The note Shri J. K. Sharma, A.S.M. on duty at DSH had written in the Log Book of Noli reads as follows:—

"SM NO

As per Shedman DSH there is no arrangement for 3 Up Passenger engine till 10 Dn. comes here.

Sd./- J. K. SHARMA,

1-1-63 coded 7 O'c."

This was an incorrect information regarding the power position as the power for 3 Up train was made available at about 8 o'clock and there is no evidence to show that at 7.00 hrs. when he had recorded information in the Noli Log-Book, the power position was such as to warrant this remark. In his evidence the Shedman at DSH denied having received any enquiry from DSH station regarding power position for 3 Up train and he had categorically stated that he had given no information that power for 3 Up train would not be available till arrival of 10 Dn. train. He had also stated that he was sure power would be available in time and it was actually made ready at 7.30 hrs."

56. The Shedman at DSH, Shri B. N. Kundu has been examined before me as MW11. He has stated that on the morning of 1st January, 1963 since the boiler tube of the engine originally meant for 1 Up was found to be defective, the engine meant for the 3 Up train was utilised for the 1 Up and that was sent at about 6.40 A.M. Thereafter preparation of the engine originally meant for the 1 Up train was started so that it might be used for the 3 Up. That engine was repaired and was in working order by about 7.30 A.M. and it was then sent for the 3 Up train. In addition to these engines, there was another engine which was meant for the 5 Up which leaves Shahdara at about 10 A.M. That engine was in working order. The witness has asserted that Shri J. K. Sharma, Assistant Station-master never came to the Shed on 1st January, 1963 to enquire about the power position nor was it the practice for any Station-master to come to the Shed for such enquiries. According to the witness there is a connection of the control telephone at the shed which starts working at 8 A.M. but Shri J. K. Sharma never made any enquiries on the morning of 1st January, 1963 from the shed either through a messenger or by phone about the power position regarding 1 Up and 3 Up. Nor did he enquire about the power position for the goods train, nor did any pointsman come to him at the shed on that date to enquire about the power position. He has specifically denied that he sent any

message to any-one that the shed would not be in a position to send an engine for 3 Up until the 10 Dn. had arrived. I must say, however, that since control telephone connection at the shed could not have started working before 8 A.M. there could be no question of any enquiry by phone from the shed before departure of Bishamber, pointsman for Noli.

57. The statements made by the Shedman before the second enquiry committee and the domestic enquiry committee are respectively Exts. MW11/1 and MW11/2. In Ext. MW11/2 he had stated that according to his calculation the engine originally meant for 1 Up would be ready at about 8.00 A.M. to work 3 Up. He, however, admitted that he had no relief engine available for the goods train held up at Noli due to engine failure, that the 1 Up left DSH at 1.50 hours late due to the failure of the scheduled engine and further that the 3 Up could not be started in time because the scheduled engine of 3 Up had been used to work 1 Up. He also admitted that at 7 hours he had two engines in the shed namely, the engine of 1 Up which had tube trouble and which was not ready at 7 O'clock but was made ready and steamed out at about 8 O'clock. The other engine was of the 8 Dn. but the coaling of that engine would have taken longer time. In his evidence before me Shri Kundu has, however, stated that although, according to his belief, the 8 Dn. train had arrived at DSH at 3 A.M. which was its scheduled time for arrival its engine was booked for 5 Up. That engine, according to the witness, could not be given for the 3 Up because it was the same driver who had to take back the engine and he would require a minimum rest of 8 hours. It is, therefore, obvious that the engine of the 8 Dn. could not be made available for the 3 Up and the engine originally meant for the 1 Up was not ready before 8 A.M. Therefore, at 7 A.M. the position obviously was that no power was available either for the Goods Special standing at Noli or for the 3 Up and it is not improbable that information to that effect was supplied by some-one to the A.S.M. on duty. The witness has admitted that during his absence from duty upto 6 A.M., it was the shed-jamadar who was in charge of the shed. He has also stated that at about 6 A.M., the shed-clerk came to his quarters to say that the engine for the 1 Up had not till then left the shed. He did receive a message through some messenger while he was still in his quarters that the goods train was standing at Noli Station but he did not remember who gave him this message. He did not send any written reply to the message nor did he send any oral message. I am not convinced that this witness really joined his duties at the shed at 6 A.M., as stated by him and it is quite possible that the Shed-man's information referred to by Shri J. K. Sharma in his note marked as 'B' in Ext. M/28 was obtained from the shed-jamadar in the absence of Shri Kundu. In any case it is immaterial, whether the alleged information was received from the Shedman or from the shed-jamadar or even whether it was not actually received. Shri J. K. Sharma has asserted that he personally went to the shed and got the information but even if this statement be untrue, it is immaterial in so far as the station authorities at Noli were concerned and what should have mattered was the written message, right or wrong, received through Shri Bishamber, Pointsman.

58. Even the domestic enquiry committee in their findings contained in Ext. MW12/6 dated the 4th May, 1963 were constrained to observe as follows in regard to the conduct of Shri J. K. Sharma in sending the note in question to Noli:—

"He was also found to be unreliable, lacking in sense of responsibility and suffering from confused thinking as he admitted that he sent a note to Noli station misrepresenting the power position of 3 Up train when Programme System of Train Working was in force and giving uncalled for information, which were incorrect and incongruous."

In the remarks and reasons for the findings Ext. MW12/6A the committee has tried to show with reference to the entries in the Station Diary of Noli Ext. M/25 that the remarks made by Shri Ram Nath Sharma relating to the failure of engine of the Up goods special initially i.e. in the first note, although referring to the despatch of a message through Pointsman, Bishamber to DSH for a relief engine, did not mention any instructions to the Pointsman to bring the position of 1 Up and 3 Up in writing. There is, however, a second note in the Diary, made on the margin, in which there is a mention of Bishamber having been sent with 3 messages and with instructions to bring the position of 1 Up and 3 Up in writing. The alleged written assurance of the ASM, DSH to start 10 Dn. first is also mentioned in this note which has been reproduced along with the reasons for the findings of the second enquiry committee. The marginal note 'B' is stated to have been recorded at 7.50 hours when Shri Ram Nath Sharma was handing over charge to Shri Baljit.

59. The second important point in connection with the responsibility of Shri Baljit in allowing 10 Dn. to proceed from Noli without the prior arrival of 3 Up relates to the question, whether or not the original copy of the programme sent by ASM, Noli to DSH was returned by the latter to Noli and if so in what circumstances and what is its effect. As already stated a programme of working trains in duplicate was prepared by Shri R. N. Sharma, ASM Noli after coming to know of the failure of telegraph communications between Noli and DSH. One copy of the programme was sent along with 7 Dn. train which was the first train in the programme and the copy was delivered to J. K. Sharma, ASM on duty at DSH on the arrival of 8 Dn. from Noli at 4.15 hours. According to the rules this programme was meant to be followed by S.M., DSH in the working of trains at his end. Shri Baljit's case is that this original copy of the programme was returned by Shri J. K. Sharma, ASM on duty to Noli with the 1 Up train which left DSH at 05.00 hours and reached Noli at 7.13 hours. In his statement Ext. MW12/4A on 2nd January, 1963 before the first enquiry committee Shri Baljit stated that when he reached the station after arrival of 1 Up at about 7.13 hours, he found that guard R. P. Singh had made over the copy of programme No. 1 saying, "your programme has been returned by DSH." Shri R. N. Sharma in his statement Ext. MW12/1A dated the 2nd January, 1963 made before the first enquiry committee stated that when 1 Up arrived at Noli Station at about 7.13 hours on programme system in the presence of Shri Baljit, its guard Shri Rampal Singh gave him a message (written) along with a copy of programme sent to the witness by S.M., DSH. In his statement Ext. MW12/1B on the 11th January, 1963 before the second enquiry committee, questions No. 2 and 3 put to him by the committee and the answers are recorded as follows:—

"Q. 2 Did Guard Ram Pal Singh of 1 Up obtain any acknowledgment from you when he handed over to you copy of programme which was sent from Noli to DSH?

A. No. He only placed it on the table along with other messages and stated that here is your programme returned back from DSH.

Q. 3 Did not you ask him as to why it was returned from DSH?

A. No. I did not ask him specifically."

The witness was also examined at the domestic enquiry and question No. 4 and its answer which relate to this point are recorded in the statement Ext. MW12/1 dated 17th April, 1963 as follows:—

"Q. 4 Was this programme returned to you from DSH?

A. No."

It is quite clear from questions No. 2 and 3 and their answers that the word "this programme" in question No. 4 refers to the programme sent to DSH by the witness along with the Guard of 8 Dn. train. Further questions on the same point appear as questions 1 and 2 in the cross-examination of the witness by Shri Baljit. These questions and their answers are recorded as follows in Ext. MW12/1:—

"Q. 1 Is it not a fact that the original programme sent to DSH by the Guard of 8 Dn. was returned from DSH to Noli by Guard of 1 Up namely Shri Ram Pal Singh and was received by you in my presence?

A. Yes. It is a fact.

Q. 2 Do you remember what Guard Ram Pal Singh said when he handed over the programme?

A. Shri Ram Pal Singh said that this was the programme returned by DSH."

A further question by the committee for clearing the contradictory statements made by the witness regarding return of the programme to Noli is question No. 9. The question and its answer is recorded as follows in the statement:—

"Q. 9 You stated in answer to question No. 4 that the programme you sent to DSH was not returned from DSH whereas in cross examination by Shri B. S. Sharma *vide* his question No. 1 you stated that it was a fact that the original programme sent to DSH was returned from DSH to Noli by Guard Ram Pal Singh and was received by you in presence of Shri Baljit Singh. How do you reconcile these two statements?

- A. The first question by the committee (i.e. Q. No. 4) I did not understand."

Then there are questions 11 to 14 by the committee on the same subject which are as follows along with their answers:—

- "Q. 11 Is it a fact that the Guard of 1 Up train told you that he had brought the programme by mistake?  
 A. No, he did not say.  
 Q. 12 Did the S.M., DSH send any written memo returning the programme?  
 A. No.  
 Q. 13 Was the programme entered in the Guard Guidance?  
 A. No.  
 Q. 14 Is it not necessary to return the programme duly entered in the Guard Guidance or through a written memo?  
 A. Yes, it is necessary."

60. It seems to be correct as stated by Shri R. N. Sharma that he did not understand question No. 4 put to him in examination-in-chief as to whether the programme had been returned to him from DSH and it was under a misconception that he replied "No". This is clear from his answers to subsequent questions in cross-examination by Shri Baljit and by the committee. Guard Rampal Singh, himself has been examined before me as MW6 and has stated that when he received permission of Shri J. K. Sharma, ASM on duty to proceed with T9G, he did not receive any programme from him for delivery to the Noli Station-master nor did he hand over any programme to the ASM of Noli, Shri Ram Nath or to Shri Baljit Singh Sharma, S.M. of Noli. Exts. M/20 and M/21 respectively are the statements made by this witness on 11th January, 1963 and 18th April, 1963 before the second enquiry committee and the domestic enquiry committee. In Ext. M/20 he stated that after T9G had been handed over to the driver of his train at DSH and just when the train was leaving R.A.S.M., Jugal Kishore Sharma came to his brakevan and handed over one piece of paper saying that it was XT to be handed over to S.M. Noli. He accordingly handed over the slip of paper to the S.M. Noli. On a question, whether he saw the slip of paper or read its contents, he replied in the negative. He also replied in the negative to a further question, whether he obtained any signature of the S.M. Noli for handing over the XT. Before the domestic enquiry committee the witness was put certain questions on this point. These questions and their answers are recorded as follows:—

- "Q. 1 You stated on 11th January, 1963 that just when your train was leaving DSH R.A.S.M. Jugal Kishore Sharma came to you and handed over one piece of paper saying that it was XT and requested you to give it to S.M. Noli. Was this paper a copy of the programme which you signed, or was it the original programme which you signed?  
 A. The paper came to me folded. I did not open it and so I cannot say what it was.  
 Q. 2 The paper that you received from Shri Jugal Kishore Sharma was it a message form No. Rev. G/345.  
 A. I do not remember.  
 Q. 3 Do you remember in which paper the programme was made and which you signed?  
 A. It was in correspondence paper i.e. paper used for correspondence. Size of Rev. G/340.  
 Q. 4 Do you remember the size of the paper which was given to you by Jugal Kishore Sharma?  
 A. It was given to me folded and it seemed to be of the size of our message form No. Rev./345.  
 Q. 5 To whom did you hand over the paper at Noli?  
 A. I personally went to the office of the S.M. and found there Shri Baljit Singh Sharma and Shri Ram Nath Sharma I kept that paper on the table."

- Q. 6 Did you tell them what the paper was?  
 A. I told them that this is the XT sent by DSH.
- Q. 7 Did you tell them that this was the programme?  
 A. No.
- Q. 8 Are you absolutely sure that you did not tell them that it was programme?  
 A. I am absolutely certain that I did not tell that it was programme
- Q. 9 Did it appear to you as a programme which you signed?  
 A. It appeared to me XT. It did not appear to me as the programme.
- Q. 10 After signing the programme at DSH did you by mistake or absent minded take the programme with you to Noli?  
 A. No, I did not take the programme to Noli I handed it over after signing to A.S.M. Shri J. K. Sharma.
- Q. 11 Are you sure that you gave to S.M. or A.S.M. Noli only one chit which was called XT or more than one chit?  
 A. I gave only one chit for XT."

The witness was also cross-examined by Shri Baljit on this point and the questions and answers are recorded as follows:—

- "Q. 1 Are you sure that the paper that you brought was a written XT?  
 A. It seemed like XT but I did not read the contents of the paper and I am not aware.
- Q. 2 Could you therefore, definitely say that the contents were XT or was it your simply presumption?  
 A. This was given to me by J. K. Sharma as XT I did not open it and so I presume that it was XT.
- Q. 3 Was it a plain white paper?  
 A. It was a dirty white paper.
- Q. 4 Was it a lined paper?  
 A. This, I cannot say.
- Q. 5 In the message forms is it not that there are ruled lines?  
 A. Yes.
- Q. 6 Did you see that the paper had ruled lines or not?  
 A. It was folded and I do not know.
- Q. 7 Is it not that XT messages are usually on lined paper?  
 A. Yes.
- Q. 8 Is it a fact that after getting the programme signed by you and taking the T9G Book Shri J. K. Sharma left your brake-van and came again to make over to you the paper in question?  
 A. Before the train started I signed the programme and returned it and the book T9G to Shri J. K. Sharma and he left the place. He came again when the train started moving, and gave me the paper which he called XT. I do not know the contents of the paper.
- Q. 10 Can you prove from your Guard's Guidance that the paper that you brought from Shri J. K. Sharma was actually the XT?  
 A. It was not entered in the Guard's Guidance."

61. It is necessary to state here that the original copy of the programme sent from Noli to DSH has been proved in the evidence of Shri Bharat Singh, S.M., DSH, MW10 and has been marked as Ext. M/31A which according to the witness is the Shahdara copy of the programme issued by Noli. Exts. MW10/1 and MW10/2 are respectively the statements made by this witness before the second enquiry committee on 11th January, 1963 and the domestic enquiry committee on 17th April, 1963. In Ext. MW10/1 the witness stated that he went to B.G.

Station to drop cash in 2 ATD at 09.06 hours but before his departure both 3 Up and 10 Dn. had arrived at DSH. On his return from the B.G. Station at 09.15 hours he scrutinised the T9G Book but did not find the programme with the T9G Book and enquired from ASM, Jugal Kishore Sharma who stated that it was along with the papers but he was unable to produce it. Shri R. K. Khanna, Guard of 10 Dn. also arrived at the same time and he handed over the programme with other papers. The witness signed in his rough journal book in acknowledgement of these papers and the programme. On a scrutiny he found that the programme bore signatures in respect of all the trains which were run under the programme system namely 8 Dn., 1 Up, 3 Up and 10 Dn. On being shown the programme to him, he however, corrected himself by saying that there was no signature against the 3 Up train. He also stated that he had asked Atma Ram Tewari, ASM, to take away all papers and show them on his return but Shri Atma Ram Tewari did not give him the programme along with the papers recovered by him from Shri Jugal Kishore Sharma. The witness further stated that the guard of 10 Dn., Shri R. K. Khanna told him that the programme was given to him by S.M. Noli. In his statement before the domestic enquiry committee Ext. MW10/2 he was put further questions on this point by the committee. He stated therein that he had kept the papers received from Shri Atma Ram Tewari under lock and key and had handed them over to Shri J. K. Sama (Traffic Inspector, MW9) and the programme was included in the papers handed over to Shri J. K. Sama.

62. Shri J. K. Sharma himself was not available for examination before me but was examined by the three enquiry committees. In his statement Ext. MW12/5A before the first enquiry committee on 2nd January, 1963 he stated that he received the copy of the programme sent by ASM Noli through the guard of the 8 Dn. train. On receiving the report through Bishan, Pointsman that the engine for 3 Up was coming, he made out the permission to proceed without line clear for 3 Up train which left DSH at 8.15 hours. The witness stated that he took the signatures and time and departure as per rules in the programme from the guard of 3 Up train Shri R. D. Tomar. The committee put him certain questions on his statement that he took signatures and time of departure as per rules in the programme from Guard, Tomar. When he was asked to show the record, where such time and signatures were obtained from Shri Tomar, guard of the 3 Up, he replied that he took the signatures and time from Shri R. D. Tomar, both on the copy of programme and on permission to proceed without line clear. When he was asked to show, where exactly the signatures of Shri Tomar had been taken on the copy of the programme, he could not find any signatures or time on the copy of the programme for DSH Station. He was then asked why he had returned the copy of the programme received from Noli with Shri Rampal Singh, the guard of 1 Up train and he replied in the negative saying that he did not return the programme and that the programme was lying with the witness at DSH. He was asked why he failed to produce the programme when asked for by Shri Tomar, the guard of 3 Up train and he replied that he had shown the copy of the programme to Shri Tomar but did not know whether he signed it or not. He further denied that he had received any copy of the programme through the guard of 10 Dn. train. In this connection it may be stated here that in his evidence before me as MW2, Shri R. K. Khanna, the guard of 10 Dn. train has stated that when his train left Noli he was handed over one copy of the programme by Shri Baljit for passing it on to S.M. DSH and that it was a copy of the same programme which he had signed before leaving Noli. He had handed over that copy to Shri J. K. Sharma, ASM of DSH on reaching that Station. This copy of the programme received by him from Baljit was entered in the document known as the Guard's Guidance wherein he took the signatures of Shri Jugal Kishore at the time of handing over the copy to him. This document is Ext. M/9 and at the point marked as 'A' there is a following note:—

One working programme m/o (made over) to S.M., DSH.

This bears the initials of Shri J. K. Sharma and is evidently in token of the receipt of the copy of the programme given to Shri J. K. Sharma. MW2 has confirmed that it bears the signatures of Shri J. K. Sharma. In his statements Exts. M/6, M/7 and M/8 respectively before the first, second and the third enquiries on 2nd January, 1963, 11th January, 1963 and 18th April, 1963, he made a similar statement. It appears that against the receipt marked as 'A' in Ext. M/9 there are two initials, one which clearly read as J. K. Sharma and another which cannot be clearly read. At the domestic enquiry he was asked *vide* question 9 of Ext. M/8, whose were these two signatures for receipt and he replied that both these signatures were of ASM, J. K. Sharma and explained that J. K. Sharma originally initialled



it but as it was not quite legible, the witness requested him to make clear signatures. In answer to question 12 of the committee, he replied that he signed the programme at DSH and noted the time of arrival and that the programme which he signed was with him. It was given by the S. M. Noli. In answer to a specific question 15, he replied that after arriving at DSH, he went to the Station Room and signed the time of arrival and then handed over the copy of the programme to Shri J. K. Sharma. In reply to question 16, he stated that he did not enquire from the S. M. Noli why this programme was being sent to DSH because he did not think it necessary to ask. He further explained in answer to question 17 that as the programme was with him he did not ask for it but himself put his time of arrival in the programme and initialled it.

63. Shri R. D. Tomar, MW4 has stated before me on the other hand that when he started the 3 Up train from DSH at 8-15 A.M. while the programme was still in force, the ASM on duty did not get his signatures on the programme; that he actually asked the ASM about the programme but the A.S.M. could not produce it and said, he had "misplaced it somewhere in the papers". The witness then signed the record portion of T9G. Now under the rules when the trains are being run under the programme system it is mandatory on the guard to sign the copy programme and to record the time of departure of train on the copy before starting the train. The witness has stated that he could not do this while starting the 3 Up but signed the record portion of T9G and noted the time and this was because the ASM on duty failed to produce the copy programme i.e. the Shahdara Station copy of the programme. In cross-examination the witness admitted that the ASM on duty at Shahdara had himself made out a copy of the programme in his own hand-writing but that was not the authentic copy. He, however, stated that the copy so made out by the ASM, DSH was not shown to him, at the time of departure of 3 UP but according to his information, it was later found at the enquiry and he saw the ASM's copy during the enquiry. In his evidence at the second enquiry on 11th January, 1963 Shri J. K. Sharma vide Ext. MW12/5B, stated once again in answer to question No. 2 that after the departure of 1 Up, for which train he had obtained the signatures of guard Shri Rampal Singh in the copy programme, the copy programme remained with him. In answer to question No. 3 he stated that he did obtain signatures of Shri R. D. Tomar, the guard of 3 Up train and the time and departure, as per rules, in the programme from the guard. When he was shown the original copy of the programme which is Ext. M/31A, he admitted, for the first time, in reply to question No. 4, that in hurry the Guard's signatures were actually obtained on T9G No. 36 for 3 Up and not on the programme. Then followed question Nos. 5 and 6 which along with their answers are as follows:—

"Q. 5 Did you give any slip of paper to Guard Ram Pal Singh of 1 Up train before departure of 1 Up train?

A. Yes, I gave him one XT for the lineman to be delivered at Noli.

Q. 6 Are you sure you did not by mistake give the programme (DSH Copy) to Guard Ram Pal Singh of 1 Up.

A. I am sure because the copy of programme was with me all the time after departure of 1 Up."

In reply to question No. 7, whether the guard Shri R. K. Khanna of 10 Dn. had made over to him a copy of the programme, he replied that he did receive a packet from him but he did not know what the contents of that packet were. Question Nos. 12, 13 and 14 put by the committee to the witness in this connection and their answers are also relevant and they are as follows:—

"Q. 12 You have stated after departure of 1 Up/3 Up your copy of the programme was in your possession. What did you do with this programme?

A. As soon as 3 Up returned back to DSH and before arrival of 10 Dn. I was with Station Master Bharat Singh and A.S.M. Atma Ram Tewari and the latter asked me about the programme. I promptly produced the programme from my pocket and handed over to Shri Atma Ram.

Q. 13 Please see Guard's guidance of 10 Dn. of 31st December, 1962/1st January, 1963. There is one entry regarding "One working programme Noli to S. M. DSH." This is acknowledged by you please say if these are your signatures.

A. Yes, these are my signatures.

Q. 14 How could the programme be with you when it was received by you through Guard of 10 Dn.

A. I had my copy of the programme with me all the time. This may be some other paper, because I do not remember about the contents of the packet which I received from the Guard of 10 Dn. train."

At the domestic enquiry further questions were asked from Shri J. K. Sharma on this point by the committee. Questions 6 to 9 along with their answers are as follows:—

"Q. 6 When the 3 Up was to start from DSH why is it that you could not produce the programme that you received from Noli, and to get it signed by the Guard of 3 Up?

A. I had the programme with me when 3 Up was about to start I gave the programme and got T9G signed by the Guard of 3 Up. Shri Tomar went with the T9G and the programme to see the driver. On his return when the train had almost started he handed over the programme to me and I did not see whether he had signed it and kept it in the pocket. Later, I found that the Guard of 3 Up train had not signed the programme.

Q. 7 It has been stated by the S. M. Noli, Shri B. S. Sharma that the programme which was sent from Noli by 8 Dn. was received back by him when 1 Up reached his station and it was given to him by the Guard of 1 Up. He also stated that he sent this programme treating it as new programme with the Guard of 10 Dn. Do you accept this?

A. This is not correct.

Q. 8 Guard R. K. Khanna stated that he brought one working programme from Noli by 10 Dn. and this was entered in the Guard's guidance and this was given to you and you acknowledged by putting your signatures against it. You see this Guard's Guidance and say how you reconcile you with your previous statement?

A. Guard R. K. Khanna gave me a packet and asked me to put his initials on the Guard's Guidance against one entry which I did not scrutinise properly as I was then somewhat puzzled. He did not say that the bundle of papers given to me contained the programme.

Q. 9 To whom did you hand over the programme on 1st January, 1963 and at what time?

A. When 3 Up returned to DSH and before 10 Dn. reached DSH Shri A. R. Tewari came to me and asked for the papers in connection with the case. I handed over the programme to him. He took it to the S.M. and gave it to him."

In cross-examination by Shri R. D. Tomar, there are further questions 5, 6, 7 and 8 which along with their answers are as follows:—

"Q. 5 You stated that the programme No. 1 of 1st January 1963 was with you even after the departure of 3 Up train. How is it that Guard of 10 Dn. Shri R. K. Khanna signed in this programme noting the departure time at 8-05 from Noli and the arrival time of the train at DSH. How was this made available to Guard Shri R. K. Khanna for such entries.

A. Before the arrival of 10 Dn. this programme was taken from me by A. R. Tewari A.S.M., DSH. I cannot say how Guard R. K. Khanna got this to make such entries after this programme was taken from me by Shri A. R. Tewari.

Q. 6 You have stated that before arrival of 10 Dn. the programme No. 1 was taken from you by Atma Ram whereas it is seen in the programme that after the restoration of telegraphic communication the programme was cancelled at 9-05 hrs. and you signed it. Were you on duty and how did you get it and signed.

A. Though my duty hours on 1st January, 1963 were upto 8-00 hrs. on account of accident on that date I worked upto 9-00 hrs. Shri A. R. Tewari brought this programme to me and asked me to cancel it as the telegraphic communications were restored. I did this work for him.

Q. 7 You are shown a true copy of the programme No. 1 issued from Noli on 1st January, 1963 please state whether you wrote it and it is in your hand-writing.

A. Yes, it was written in my own writing.

Q. 8 Why did you prepare this copy?

A. I do not remember."

64. The three copies of the programme have been placed on the record. One is the original in pencil which is marked as Ext. M/27A and which appears to be the one meant for Noli and used by the ASM and S. M. there. The second copy is Ext. M/31A which is a carbon copy of Ext. M/27A. This is the one originally sent from Noli to the ASM, DSH when the programme system was introduced. It was sent with 8 Dn. and it contains entries of the time and departure of 8 Dn., 1 Up, 3 Up and 10 Dn. There is a third copy marked as Ext. M/31B written in ink on which there is a note at the top in the following words:—

"True copy of original with S.M., DSH." It will be seen that Ext. M/31B which is written in ink does not bear the initials of any guard while both Exts. M/27A and M/31A contain initials against the trains run under the programme system. In Ext. M/31A there is no initial against the 3 Up which is the 3rd train in the programme. In regard to the copy Ext. M/31B, Shri J. K. Sharma as shown above admitted in reply to question Nos. 7 and 8 of Shri R. D. Tomar in Ext. MW12/5 that the copy is written in his own hand-writing but he could not explain why he prepared this copy.

65. From the evidence discussed above there can be no doubt that, for some un-explained reason, and, most likely under some confusion, Shri J. K. Sharma sent back to Noli the original carbon copy of the programme along with the guard Shri Rampal Singh of the 1 Up train although he has consistently denied having done so and only admitted before the second enquiry committee that he gave to Shri Rampal Singh before the departure of 1 Up train a slip of paper which he described as an XT for the lineman. He did not even admit, in answer to question 6, that he had by mistake given the programme to the guard. The guard, Shri Rampal Singh, as shown above has also tried to maintain this fiction by saying that ASM, Shri J. K. Sharma gave him an XT to be handed over at Noli which he, accordingly, handed over to S.M. Noli. He also stated that he did not read the contents of the slip of paper nor did he see it. He further stated that Shri J. K. Sharma told him while delivering it that it was an XT to be given to S.M. Noli and that the paper was folded when he received it. It is however, conclusively proved from the evidence not only of Shri Baljit and of Ramnath Sharma, S.M. and ASM respectively of Noli but also of Shri R. K. Khanna, the guard of 10 Dn. train that the original copy programme was received back at Noli and was returned by the S.M. and ASM of Noli to DSH along with Shri R. K. Khanna by the 10 Dn. train. It was duly entered in the Guard's Guidance and was handed over to Shri J. K. Sharma under a receipt as shown above. J. K. Sharma has even attempted to deny the receipt of the original copy programme through Shri R. K. Khanna. It seems, however, that J. K. Sharma was, through-out under some confusion as there appears to have been no valid reason for his sending back the programme to Noli before it was cancelled. In all probability J. K. Sharma meant to deliver some other document, whether an XT or otherwise to the guard, Shri Rampal Singh and actually delivered the programme copy which he was bound to retain with him so long as the programme system was in force and, at the time, when the 3 Up started he could not produce it for the signatures of Shri R. D. Tomar for the simple reason that it had already gone to Noli and came back only with 10 Dn. train. A careful examination of the programme copy Ext. M/31A shows that even when folded it does not look like an XT or a message form. It is in evidence that such message forms are lined while Ext. M/31A is not. Certain message forms actually sent have been placed on the record such as Exts. MW9/3-5 and M/13. Shri Rampal Singh, the guard does not seem to have spoken the truth when he says that he took the document handed over to him as an XT form and delivered it as such to S.M., Noli. Even if, however, he mistakenly took the document as an XT form, it does not support the management's case. He admittedly never unfolded it and never read it.

66. In this connection I may refer to the document Ext. M/34 containing the reasons for the findings given by the second enquiry committee for their report dated 11th January, 1963. The relevant portion runs as follows:—

"A copy of the programme No. 1 made out by the A.S.M. on duty at Noli was sent to Delhi-Shahdara through the Guard of 8 Dn. train. It is found

that from the evidence that the Programme which was received at Delhi-Shahdara bears the signature of the Guard of 8 Dn. and the Guard of 1 Up trains. It further has the signature of the Guard of 10 Dn. train showing its departure from Noli at 8-05 hrs. and arrival time at 3-50 hrs. at Delhi-Shahdara. It does not bear any signature of the Guard or any entry against 3 Up train. The Guard guidance of 10 Dn. has an entry as follows:—

"One Working Programme from Noli to DSH, Sd/- J. K. Sharma."

There is no evidence to show that this Programme was deliberately returned to Noli by A.S.M. on duty at Delhi-Shahdara, Shri J. K. Sharma although from the foregoing it is possible that the Programme had gone back to Noli through inadvertance before the departure of 10 Dn. It may be noted that no plausible reason was given for sending the Programme again to DSH except what is stated by Shri R. N. Sharma of Noli. This may be seen from the following Question put to him and his answer:

- "Q. Why did you return the Programme through the Guard of 10 Dn. train?
- A. Since the copy of the Programme was meant for DSH station and thinking it was returned to Noli by mistake I sent it back to the Guard of 10 Dn. train.

There seems to be force in the observations of the enquiry committee on this aspect of the occurrence. The domestic enquiry committee in the remarks and reasons for the findings Ext. MW12/6A recorded on the 4th May, 1963 had commented in para. 12 on this aspect of the matter as follows:—

"From the facts on record, we are satisfied that the Programme No. 1, prepared by Noli station and sent through the Guard of 8 Dn. to DSH, did not come back to Noli station through the Guard of 1 Up for cancellation, as stated by Sri Baljit Singh Sharma. Shri J. K. Sharma asserted that the Programme was never sent from DSH to Noli. Guard of 1 Up stated that he did not take the Programme to Noli. Guard's Guidance paper does not show that the Programme was returned to Noli nor is there any remark in the Programme itself that it was returned to Noli and lastly, in the Station Diary of Noli, in which the A.S.M. and the S.M. recorded the note on 1st January, 1963 stating the reasons for which 10 Dn. was started from Noli at 08-05 hours on 1st January, 1963 before the arrival of 3 Up, no mention was made either by S.M. or by A.S.M. that the Programme was returned from DSH to Noli."

The committee has referred to question No. 9 put to Shri Bharat Singh by the committee and its answer in support of their conclusion. These are as follows:—

- "Q. 9 Did you enquire how the Programme came from Noli with 10 Dn. after 08-00 hrs. when the trains were running between Noli and DSH on programme system from early in the morning?
- A. Nobody told me that the Programme was returned to Noli. I asked ASM Sri J. K. Sharma. He looked puzzled. He was searching it here and there in the room but could not find it. I do not yet know how the programme disappeared from DSH Station and came back from Noli station with the Guard of 10 Dn. through Shri R. K. Khanna."

In paras. 8 and 9 of the same document the committee has observed as follows:—

"8. Station Master, Noli, Shri B. S. Sharma, made the following entry in the Station Diary of Noli on 1st January, 1963 after he took over charge i.e. after 7-50 hrs.

"As per written authority of A.S.M. Ram Nath Sharma in the Diary and being satisfied that the written assurance by ASM/DSH-on-duty, received through Pointsman Bishambhar, that 10 Dn. Mixed to start first. TNH was prepared for 10 Dn. and was started at 08-05 hours."

It is significant that in the note recorded in the Station Diary of Noli on 1st January, 1963 both by the A.S.M. Shri Ram Nath Sharma and the S.M. Shri B. S. Sharma, no mention was made that the Programme was returned to Noli by the ASM-on-duty at DSH Shri J. K. Sharma by 1 Up train which reached that day at Noli at 07-13 hours.

9. Shri B. S. Sharma could not show that there was any forwarding letter from DSH returning the Programme or any entry in the Programme itself

indicating that this was being returned. The Guard's Guidance paper of 1 Up train of 1st January, 1963 did not bear any entry to indicate that the Guard was taking the Programme from DSH. The entry in the Guard's Guidance showed that he was taking an XT message from DSH and this was delivered at Noli."

To my mind the conclusion arrived at by the committee and their reasoning on this point are quite unconvincing. I have already shown from Shri R. K. Khanna's evidence that he brought a copy programme which was noted in the Guard's Guidance and was given to Shri J. K. Sharma under his receipt which he has admitted. If the guard's guidance of 1 Up train has relevance in the context of the whereabouts of the programme copy then the guard's guidance of 10 Dn. should have equal if not greater relevance as it specifically mentions the document and its admitted receipt by Shri J. K. Sharma. If the programme copy had gone to Noli by inadvertence or confusion on the part of Shri J. K. Sharma the question of a forwarding letter from DSH for its despatch does not arise. Even Shri Bharat Singh admitted the disappearance of the copy from DSH and its return from Noli Station. There is incontrovertible evidence that the programme was not available at DSH when the 3 Up started although Shri Tomar asked for it and his signatures had to be made on another document against the rules. Evidently the programme had already left for Noli by inadvertence or otherwise and that was why it was not available when 3 Up started. That was perhaps the reason why Shri J. K. Sharma looked puzzled, according to Shri Bharat Singh, and was searching for the programme but could not find it. It may be that the programme was not sent back for cancellation but it is impossible not to agree with the finding of the second enquiry committee already quoted above that the programme had gone back to Noli before the departure of 10 Dn. train. The first statement made by Shri Ram Nath Sharma on this point before the second enquiry committee seems to be nearest the truth inasmuch as he stated that the programme which was meant for DSH Station was sent back with the guard of 10 Dn. train thinking that it had been returned to Noli by mistake. My finding on this point, therefore, is that the programme somehow came back to Noli with the 1 Up train may be through the inadvertence of Shri J. K. Sharma or even of Guard Shri Rampal Singh himself and it was returned by the S.M. Noli because it was required at DSH. It is, however, difficult to accept the argument that the programme was returned deliberately by the ASM, DSH by way of cancellation of programme or for any other reason. It is also inconceivable that Shri Baljit sent it back to DSH "in the spirit of a 'fresh programme'" as is now pleaded by him. There is no provision in the rules for the cancellation of a programme before the restoration of communications and there is also no provision for the return of a programme by any of the Station Masters concerned or for the issuance of a fresh programme while the programme system is working.

67. In this connection it is necessary to refer to the footnote in bold type marked as "Important" at the bottom of page 78, Para. 2, Chapter IV, Appendix 'A' of the General and Subsidiary Rules of Martin's Light Railways. This footnote runs as follows:—

"Only those trains shown in the Working Time Table will be allowed to run. No matter what the actual time of arrival at C or D may be, trains will be dealt with in the order that they are shown in the time-table."

According to this rule on which so much emphasis has been laid in the book the 3 Up train which was the 3rd in the programme should have first arrived at Noli and then alone the 10 Dn. which was the 4th train in the programme should have been allowed to proceed towards DSH. According to the management's case, Shri Baljit had no discretion in the matter and whatever the delay in the arrival of 3 Up at Noli and whatever its cause he had no authority to allow 10 Dn. to proceed towards DSH, since the order of trains as shown in the time-table and incorporated in the programme could not be changed by the Station Master. Rule 3 of the aforesaid appendix deals with restoration of electric communication and lays down that when signals can again be exchanged, the Station Master who sent the first train with his programme will wire to the other Station Master in the prescribed form asking him to cancel his programme and resume line clear working and also note the last train to leave his station. According to the rule, the other Station Master will reply to the telegram saying that the programme stood cancelled and asking the other Station Master to resume line clear working on arrival of the train from his side. Each Station Master will then draw a thick line under the last train that ran on the Programme and endorse in large letters as below:—

Programme cancelled... hrs. and sign it. According to the rules, therefore, it is for the Station Master who sent the first train with his programme and who in this case was the Station Master of Noli to wire to the other Station Master cancelling his own programme and resuming the line clear working. Station Master at DSH had no authority to cancel the programme issued from Noli and in any case there should have been telegraphic intimation of cancellation of the programme in the prescribed form. Without this the Station Master Noli could not have assumed the cancellation of the programme by S.M. DSH from the mere fact of the original copy programme having been received back at Noli. Shri N. N. Chaturvedi, Traffic Inspector, S.S. Light Railway was examined at the domestic enquiry for explaining the rules on the subject and his statement at the enquiry is marked as Ext. M/19. After stating that even in the event of a train as per programme not being able to run from one end the train from the opposite side as per programme cannot be run. He was put a number of questions from question No. 5 onwards which may be usefully reproduced along with their answers:—

"Q. 5 In a case that happened between Noli and DSH when Programme system of working was introduced with 8 Dn. train leaving Noli at 2.28 hrs. After passing of 8 Dn. and 1 Up train if it was found that 3 Up train which was the next train according to the programme from DSH could not be run how the rest of the programme could be possible. Next train being 10 Dn. from Noli.

A. If it is for short period i.e. if it can run then the programme should have to be followed and 10 Dn. should wait. If 3 Up cannot run for indefinite period even then 10 Dn. could not run from Noli unless the programme in vogue is cancelled and subsequent programme is made not including 3 Up treating the same as cancelled (under instructions from the authorised officer).

Q. 6 Who would in this case introduce a fresh programme i.e. from Noli or DSH side?

A. Noli will cancel the programme system and Noli will again introduce the Programme system. The second programme will not include 3 Up train treating it as cancelled.

Q. 7 How would Noli cancel the first programme and send the revised programme in absence of telegraphic communication.

A. When it will be intimated to S.M. Noli through a proper message reporting the cancellation of a scheduled train and in this case 3 Up, Station Master, DSH would send the information through an authorised messenger and then Noli on the strength of the message should make out the programme not including 3 Up in the programme will start 10 Dn.

Q. 10 Read the message in the Log book of Noli station reading as follows:—

"S.M. No. As per Shedman DSH there is no arrangement for 3 Up Passenger Engine till 10 Dn. comes here.

Sd/- ILLEGIBLE.

1-1-1963 time 7 O.C."

Do you consider this as a message cancelling 3 Up train and assuring S.M. Noli to start 10 Dn. train before arrival of 3 Up train?

A. No. Because this is not a message and this is not a proper assurance as well that in no case 3 Up will leave DSH till arrival of 10 Dn. at DSH and it is not supported by any private number because cancellation of a train when reported to other station master at the other end of the block section should be like a cancellation of line clear for 3 Up giving precedence to 10 Dn. at Noli, and should have been supported by a P. Number. Proper record and copy of this message should be kept in DSH record as well.

Q. 11 You have mentioned cancellation of line clear for a train to give precedence to another train. Are these provided in the rules?

A. Yes, as per para 15 to Appendix A Chapter XVIII of G. and S. Rules.

- Q. 12 Is your answer to question 8 based on these rules?
- A. Yes.
- Q. 13 In your answer to question 5 you have mentioned of "Authorised Officer". Who are such authorised officers on S.S. Railway?
- A. Traffic Superintendent. M.L. Railways, Calcutta, is an authorised officer as per S.R.—1/4.
- Q. 14 In your answer to question 5 you stated the procedure that could be followed in case 3 Up train could not be run for an indefinite period from DSH wherein you stated that the procedure needed the sanction of an Authorised officer and that authorised officer in case of S.S. Railway in your answer to question 13 you stated is the Traffic Superintendent, with his headquarters at Calcutta. Do you therefore, think that this procedure could be practicable with the instructions being obtained from the T.S. from Calcutta?
- A. If it is possible to get the sanction from the authorised officer i.e. T.S. in Calcutta the revised programme as stated by me could be introduced otherwise there is no provision for such revised programme being introduced in our rules."

Rules 15 of Appendix 'A' to Chapter XVIII of the General and Subsidiary Rules which is referred to by Shri Chaturvedi lays down the procedure for cancellation messages. Shri Baljit also put certain questions in cross examination on this point to Shri Chaturvedi which are quite pertinent. They are as follows:—

- "Q. 1 You have stated vide answer to question No. 5 that in the present case under reference of averted collision in the block section of Noli and DSH if 3 Up passenger was not expected to run for indefinite period your procedure mentioned therein could have been followed. Is it in accordance with Chapter IV Appendix 'A' of G. and S. Rule Book?
- A. The System suggested vide my reply in question 5 is in accordance to the rules Appendix 'A' to Chapter IV. But there is no provision of the system in the Appendix 'A' to Chapter IV hence instructions from the authorised officer would have been required.
- Q. 2 May I take it that in a case like this your reply to question No. 5 are your personal suggestions in connection with Appendix 'A' to Chapter IV of G. and S. Rule Book?
- A. These are my personal suggestions based on inferences given in Appendix IX 'A' to Chapter IV and Appendix 'A' to Chapter XVIII.
- Q. 3 In case programme system is introduced and one train included in the programme is unable to start for an indefinite period for want of power or other reasons and it is considered necessary by the Stationmaster on the other side to run the trains there is no provision in the Appendix 'A' to Chapter IV of G. and S. Rules. Will you please say if this is correct?
- A. There is no provision in the Appendix 'A' to Chapter IV of G. and S. Rules book for the S.M. at other side to start trains from his end in such a situation."

Although there seems to be no clear provision in the rules for a situation in which one of the trains in the programme is held up indefinitely at a Station while the programme system is working and it is not possible to start it, for any reason, it seems Shri Chaturvedi is not far wrong in his inference from the rules that, in such a situation, it is only the Superintendent as the Head of the Traffic Organisation who can authorise alteration in the programme and allow the next train in the authorised sequence to proceed from the other station. It would indeed be too much for one of the Stationmasters concerned to take the responsibility of revising the programme and allowing to proceed, from a station, a train which is not the next train in the order of succession, against the clear provisions of the rules. Moreover it is not correct that 10 Dn. was detained or was going to be detained for an indefinite period. According to Rahim Bux, Driver, MW1 the train arrived at Noli at 8 a.m. and left the station at 8-05 hrs. i.e. after 5 minutes. The argument on the score of indefinite detention could have had force if the train had been held up at Noli for a considerable period. As it is the S.M. Noli seems to have made up his mind to let 10 Dn. start without further enquiries.

68. On behalf of Shri Baljit a reference has been made to Circular Ext. W/4, dated 2nd April, 1958 issued by the Superintendent at Saharanpur regarding working of train control. The relevant portion of the Circular runs as follows:—

*“With effect from 5th April, 1958 the existing working of train control will be abolished. There will be no assistant controllers available in the Control Office to give instructions to the Stationmasters for arranging crossings of trains. The Station Masters will therefore arrange crossings of trains in consultation with the Stationmasters on either side. The S.Ms. will ascertain by enquiry how the trains are running and arrange crossing in such a way that the trains suffer minimum detention-possible. In normal working the Stationmasters will give preference to trains as follows:—*

*Relief Trains when proceeding to the site of accident.*

*(a) Will have preference over all trains. Other trains will be detained where they are irrespective of their late running.*

*Express trains will have preference over passengers and mixed trains. Passengers trains will have preference over mixed-trains. Mixed trains will have preference over goods-train.*

*The Station Masters will however, have the discretion to detain a passenger or mixed train if by doing so they save a heavy detention to the goods train/or the mixed train. But ordinarily an express train will not be so detained for more than 5 minutes and a passenger or a mixed train 10 minutes.”*

It seems to me, however, that this rule even if it continued to remain in force upto the date of the present occurrence would only be applicable to normal running of trains and not to a system of programme working under abnormal conditions. Moreover the preface to the general and subsidiary rules lays down that the rules contained in the book supersede the rules hitherto in force. There is also a provision in the preface regarding alteration of orders which runs as follows:—

*“No order contained in this book shall be varied, superseded, or suspended, except under the express authority of the General Manager or Traffic Superintendent in writing, and no servant of the Administration shall be excused for neglect of any rule herein laid down, by reason of such rule having been allowed either by himself or by his predecessors to fall into abeyance or disuse. Nor shall ignorance of a rule be accepted as a justifiable plea for disregarding it.”*

There is a further provision as follows:—

*“Old orders cancelled.—All previous instructions issued in connection with general subsidiary rules are cancelled by these rules.”*

A reference was also made on behalf of Shri Baljit to a note in the officially notified Time Table to the following effect:—

*“The Rly. authorities reserve the right to cancel any train or revise the running without any previous notice.”*

Evidently this note cannot mean that a Station Master is an authority competent to cancel a train by himself or to revise the timings. Even if a Station Master is competent to cancel a train it can only be done by following the procedure already discussed above with reference to the evidence of Shri Chaturvedi. It is, therefore, clear that Shri Baljit had no authority by himself under any of the rules to direct or permit 10 Dn. train to proceed from Noli without the prior arrival of 3 Up in accordance with the programme. But I have no doubt that, in the circumstances of this case, the mistake which he has committed is nothing more than an error committed in good faith under a misconception of the rules. Whether or not the note from the ASM, DSH amounted to an assurance that 3 Up will not leave DSH until arrival of 10 Dn. from Noli is a matter on which there could be two opinions, quite apart from technicalities, but it is obvious that Shri Baljit was under the impression that, in the circumstances, 3 Up could not move from DSH until the 10 Dn. had reached there from Noli in order to make available its engine for the 3 Up. Another reason why he could have felt that 3 Up will not be allowed to move from DSH was that the copy programme issued by him to DSH had also found its way back to Noli and in its absence the S. M., DSH could not, under the rules, permit the 3 Up to



move. The error is only, therefore, an error of judgment leading to block irregularity as already found by me and I may say at-once that such an irregularity does not call for the extreme punishment of removal from service.

69. I now come to the question whether the conduct of Shri Baljit in this episode amounted to inefficiency as is sought to be made out by the management. The rules relating to conduct and discipline are provided for in Chapter X, Item 1001 of the Service Regulations 1954 of Martin's Light Railways Ext. M/37. This item defines the various penalties which may be imposed on the staff "for good and sufficient reasons". Clause (viii) of this item provides for removal from service. The circumstances in which the penalty of removal from service can be imposed have been laid down in item 1009. The item runs as follows:—

"Removal from service: (a) A Railway servant is liable to be removed from service in the following circumstances:—

- (i) Inefficiency.
- (ii) Committing any offence for which he may be dismissed under Rule 1010.
- (iii) Repeated minor offences.
- (iv) Absconding himself or over-staying sanctioned leave without sufficient cause.
- (v) Incivility to the public.

(b) When proposing to remove a Railway servant for inefficiency, it should be considered whether he can be usefully employed elsewhere."

Item 1009(d) lays down the procedure for holding an enquiry in cases of removal from service and it says that "when a Railway servant is charged with an offence meriting removal from service, the procedure outlined in Rule 1010(e) will be followed." Rule 1010(e) lays down the procedure to be followed when a Railway servant is charged with an offence, the maximum penalty for which is dismissal. Broadly speaking the rule requires that a charge-sheet shall be served on the Railway employee in question calling upon him to show cause why he should not be dismissed or removed from service or punished with any other lesser penalties. He shall be required to submit a written explanation by a fixed date, which shall ordinarily allow him an interval of 7 clear days from the date he receives the charge sheet. The charge-sheet with the explanation furnished by the Railway servant shall be considered by the Officer competent to pass an order of dismissal and he may order a departmental enquiry to be held. At the enquiry, the Railway servant may be accompanied by another Railway servant or an office bearer of the recognised union. The rule then provides for recording of evidence against and in defence of the Railway servant at the enquiry and for the result of the enquiry to be placed along with the recommendations of the Enquiry Officer or Committees before the Officer competent under the rules to pass an order of dismissal from service.

70. It seems, however, that the Railway has also certified standing orders brought into force under the provisions of Section 7 of the Industrial Employment (Standing Orders) Act, 1946. These are admittedly subsequent to the Service Regulations quoted above and have been marked as Ext. M/38. They presumably supersede the Service Regulations in so far as the latter are inconsistent with the provisions of the Standing Orders. Clause 11 of these Standing Orders provides for disciplinary action for misconduct, almost in the same terms as item 1001 of the Service Regulations quoted above. The clause lays down the penalties which may "for good and sufficient reasons" and as provided thereafter be imposed upon workmen. One of the penalties provided for is removal from service in item (g) of clause 11(d). Clause 11(v) of the Standing Orders lays down the acts and omissions which amount to "misconduct" and which, according to sub-clause (vi), make a Railway servant liable to dismissal. Sub-clause (vii) deals with removal from service and lays down under item (a) that a workman shall be liable to be removed from service for inefficiency and under item (b) committing an offence for which he is liable to dismissal. There are other circumstances also such as repeated minor offences or gross incivility to the public which make one liable to removal from service. The same item lays down that the procedure outlined for dismissal shall also be followed for removal of a workman. It also provides that where it is proposed to remove a workman from his post for inefficiency, the possibility of employing him usefully in any other capacity shall be examined, particular consideration being shown to persons whose inefficiency is due to failure to conform to the requisite standard of physical fitness. There is a further provision that every person against whom departmental enquiry is being made, shall be supplied with a copy of the findings "in connection with his dismissal and removal of service", and that the workman shall also be supplied with a copy of the proceedings of the Enquiry Committee as soon as possible after

the conclusion of the enquiry proceedings in his case, and be allowed to defend his case through union representative. I shall presently show that those provisions which are intended to safeguard the interests of the workman charged and to provide him with adequate opportunities to put up his case before the authorities concerned, do not seem to have been strictly complied with. I shall, however, first examine whether the conduct of Shri Baljit in this occurrence can be said to amount to inefficiency.

71. According to the Dictionary meaning, the word "inefficiency", means "want of efficiency; inability to effect something; ineffectiveness, inefficient character", vide page 996 Volume I of the Shorter Oxford English Dictionary. At the same page, the word "inefficient" has been defined as follows:—

"Not efficient; failing to produce, or incapable of producing, the desired effect; ineffective. Of a person: Not effecting something; not having the ability or industry required for what one has to do; not fully capable. An inefficient person."

The word "efficiency" also has been defined at page 586 of the same Dictionary as efficient power, effectiveness, efficacy. The word "inefficiency" does not seem to have been defined in any judicial pronouncement but, in so far as the Dictionary meaning is concerned, it seems to me that none of the meanings of the word as given above seem could cover a case like the present one in which there is a single instance of a mistaken interpretation of the rules by an employee or simply an error of judgment in an emergency leading to what may be called 'block irregularity' or even an 'averted collision'. What Shri Baljit did in the present instance was not an inability to effect something nor an instance of ineffectiveness nor is it an instance of the absence of ability or industry required for what one has to do or of not being fully capable. Inefficiency in the present context may mean lack of competence. A misinterpretation of the rules or an error of judgment in an abnormal situation, even if leading to dangerous consequences does not, to my mind, amount to inefficiency as it is generally understood. It may amount to misconduct if there is a habitual breach of law or of Railway rules vide clause 11(v)(g) of the standing orders. It, however, seems to be covered by clause 11(iv)(g) of the Standing Orders, which provides "for failure to observe rules and regulations not involving more severe disciplinary action." This falls under "Acts and Omissions for which a fine may be imposed on a workman." Item (h) of the same sub-clause also refers to "Inefficient, careless, wasteful, dangerous or obstructive working." A reference, however, to the charge-sheet Ext. W/13 served on Shri Baljit is also necessary in this connection. It runs as follows:—

"1. You are charged with the following offences of failures(?) and you are hereby called upon to show cause why you should not be punished with the penalty specified in item 6 of the list overleaf or punished with the lesser punishments specified in the said list."

The "offences of failures" have been stated as follows:—

"An averted collision took place between 3 Up train of 1st January 1963 and 10 Dn train of 31st December 1962/1st January 1963 between T.P. 3/4-5 and 3/1-2. According to Working Time Table 3 UP and 10 Dn trains are due to cross at Noli station. Station Master/Noli, Shri Baljit Singh Sharma is responsible for the averted collision as he started 10 Dn. train before arrival of 3 Up train at Noli in violation of the instructions contained in para 2 of Appendix—A of Chapter—IV of the General & Subsidiary Rules Part I & II regarding working of trains in case of total interruption of telegraphic communication."

This charge was based on the findings of the Second Enquiry Committee. Item 6 of this list referred to in the charge-sheet is removal from service. The description of the conduct of Shri Baljit as given in the charge-sheet does not, however, seem to fit in with the charge of inefficiency which is sought to be made out against him. Even in the final order Ext. W/15, dated the 7th May, 1963 passed by the General Manager removing Shri Baljit from service, there is no mention of "inefficiency". In para. 3 of the order, it is stated that Shri Baljit was guilty of causing the averted collision by starting 10 Dn. in violation of the provisions made in the Programme and instructions contained in para. 2 of Appendix A to Chapter IV of the General & Subsidiary Rules Parts I and II regarding Working of Trains in case of total interruption of telegraph communications. In para. 4, it is observed that it is a "very serious offence" involving the safety of running of passenger trains and so he (Shri Baljit) is not considered fit for retention in service. It was in these circumstances that his removal from service was ordered by the General Manager. To my mind it is a misnomer to call an instance of mere inefficiency an

offence serious or otherwise. An offence, in the context of disciplinary proceedings, can only mean misconduct and not inefficiency which is merely lack of competence. This letter of the general manager to Shri Baljit is evidently based on the comprehensive order Ext. MW12/10 dated the 6th May, 1963 passed on the file by the general manager dealing with the cases of all the four Railway servants who were charge-sheeted including Shri Baljit. Para. 2 of this order runs as follows:—

"It was a serious case of averted collision between two Passenger trains on a block section and the Enquiry Committee Report conclusively establishes that the persons concerned disregarded the rules and all of them were extremely negligent in their work. In view of the increasing number of railway accidents, very serious notice will have to be taken of *negligence* on the part of staff in the matter of running of trains... Railway staff responsible for causing accidents (collision or averted collision) by their *negligent* or careless work, or *disregard of rules and procedure*, deserve deterrent punishment. In the case under consideration, two passenger trains were involved and a serious collision was averted by the alertness of the drivers concerned."

Then there is a discussion regarding the conduct of each of the accused persons and in regard to Shri Baljit, it is observed as follows:—

"He was primarily responsible for the averted collision. He *did not bother about the rules and procedure*. He lacked sense of responsibility and was *dangerously hasty in his action*. He is to be removed from service with immediate effect."

It will be seen from the language of Ext. W/25 read with Ext. MW12/10 that the finding against the case of Shri Baljit was really that he did not bother about the rules and procedure and was dangerously hasty in his action. Such a finding could be covered by sub-clause 11(iv)(g) and (h) of the standing orders dealing respectively with failure to observe rules and regulations not involving more severe disciplinary action or with careless or dangerous working which I have already quoted above and they do not seem to fit in with the connotation of inefficiency according to the dictionary meaning. It is also important that the provisions of the standing orders already quoted lay down that where it is proposed to remove a workman from his post for inefficiency, the possibility of employing him usefully in any other capacity shall be examined. Neither the comprehensive order Ext. MW12/10 nor the order communicated to Shri Baljit Ext. W/15 seem to indicate that the management applied their mind to the question of possibility of employing Shri Baljit usefully in any other capacity. On receipt of the orders of removal Ext. W/15 Shri Baljit appears to have made an application Ext. MW12/11A dated the 17th May, 1963 to the general manager "through proper channel". In that application he had submitted that, without going into the merits of the case he wished to draw the attention of the authorities to the extreme severity of the punishment imposed on him and that removal from service would entirely ruin him and his family. He also pointed out that he had been in the service of the Railway for the last 18 years and it was for the first time that a charge-sheet of this nature was served on him. He, therefore, appealed for review of the decision about his removal from service. Ext. MW12/11 purports to be an order dated the 25th June, 1963 passed by the General Manager on the file. At the top of this order, appears the word "Ref. below". The first paragraph of this order deals with the case of Shri R. K. Khanna with which I am not concerned in the present discussion. The remaining portion of the order which is relevant is as follows:—

"The question of employing J. K. Sharma (who also had been removed from service) and Baljit Singh in any other capacity was not out of my mind when considering the punishment which was imposed upon them by my order dated 6th May, 1963. However, from the facts revealed from the evidence in this case and particularly of these two persons I concluded that it was no longer possible to repose any confidence upon them. I therefore ordered their removal from service in the interest of discipline and safety of the travelling public.

The evidence of Baljit revealed gross lack of sense of responsibility and *inefficiency*, utter disregard for the General and Subsidiary Rules, He had also several warnings in the past.

In view of the serious lapse on their part I fail to see any ground for revising my decision about them."

72. This order obviously passed on the review application of Shri Baljit and possibly based on the notes or comments of some subordinate officers, on the application, which are not on the record, shows that it was, perhaps, for the first time that it was realised that removal from service had to be based on a charge of inefficiency

and had to be justified on plausible grounds and also that the failure to consider the possibility of employing Shri Baljit elsewhere as required by the standing orders had also to be justified. I am constrained to say that the observation by the General Manager that "the question of employing Shri Baljit in any other capacity was not out of his mind when he passed the order" dated 6th May, 1963, seems to be a belated attempt to cover up the failure to comply strictly with the provisions of the standing orders in this respect and to reconcile the order of removal already passed with the requirements of a case of inefficiency. Even so I am afraid, it is difficult to reconcile those orders with the language of the charge-sheet served on Shri Baljit.

73. Another failure on the part of the management to comply strictly with the provisions of the standing orders in the matter of the enquiry against Shri Baljit was in the matter of supply of necessary documents. He has stated in his evidence before me that he was not supplied copies of proceedings and findings of the domestic enquiry committee before the imposition of the punishment although this had been usually done in other cases. In his grounds of appeal also, vide Para. 3 of Ext. MW12/12F, he had alleged that the findings and proceedings of the enquiry held on the 17th April, 1963 to 19th April, 1963 (Departmental Enquiry) were not provided to him as per rules and he had also complained that a second show cause notice was not issued to him. In dealing with this complaint it has been observed at page 13 of the appellate order Ext. MW12/13 that there was no provision in the Service Regulations or the standing orders laying down that copies of the enquiry proceedings were to be supplied to the charged person before making the order imposing punishment, whether removal from service or otherwise. This observation, however, does not seem to be quite correct. The last sub-para of para. 11(vii) specifically lays down that every person against whom departmental enquiry is being made shall be supplied with a copy of the findings *in connection with his dismissal and removal of service* and that the workman shall also be supplied with a copy of the proceedings of the Enquiry Committee *as soon as possible after the conclusion of the enquiry proceedings in his case* and be allowed to defend his case through union representative. This provision could hardly serve any useful purpose if the copies of the findings of the departmental enquiry committee and of the proceedings of the committee are supplied after the actual imposition of the punishment following the findings. Standing orders or Service Regulations of important establishments often provide for a second show cause notice. In this particular case, although there is no specific provision for a second show cause notice to be issued after the conclusion of the departmental enquiry, the provision quoted above seems to be designed to afford an opportunity to the charged employee to make a representation, if thought fit, to the appropriate authorities against the findings of the committee in a case where the employee is liable to dismissal or removal from service or where such a punishment has been recommended. Otherwise the requirement of supply of a copy of the findings "in connection with the employee's dismissal or removal from service" could have no meaning. The direction for the supply of a copy of the proceedings with least possible delay also seems to be designed to achieve the same object. In the appellate order Ext. MW12/13 it has been stated in para. 28, that the recording of statements of the witnesses was concluded on the 19th April, 1963 while the findings of the committee were supplied to Shri Baljit on the 4th May, 1963 and that, according to the records, copies of the enquiry proceedings were sent to Shri Baljit through the Superintendent under a letter, dated the 11th May, 1963. The order of dismissal, however, passed by the general manager on the file is dated the 6th May, 1963 (Ext. MW 12/10) as already shown above and it was communicated to him by a letter dated the 7th May, 1963 Ext. W/15. Even according to the management's version, therefore, the findings were supplied to the workman only two or three days before the order of dismissal passed by the general manager was communicated to him while the copies of the proceedings were supplied to him after the order of removal had been already communicated. Along with his grounds of appeal, Shri Baljit had stated in Ext. MW 12/12.I at page 2, that the findings and proceedings of the enquiry committee were supplied to him after the order of removal from service had been issued and served on the 15th May, 1963. Even according to the management's version, however, there was no compliance with the spirit of the rules as already shown by me. The same allegation finds a place in Para. 3, Part 2 of the statement of claim. In reply to this, the management in their rejoinder have merely stated that copies of the proceedings of enquiry into the charges were furnished to Shri Baljit after the conclusion of the enquiry in accordance with the Railway's standing orders. There is, however, no categorical denial of the allegation in the statement of claim, that the copies of the findings and the proceedings were supplied to Shri Baljit after the removal orders had been served on him. This action of the

management had the effect defeating the very object of the provision by depriving Shri Baljit of any opportunity of making a representation to the ultimate authority against the imposition of the proposed punishment of removal from service. In regard to the issue of a second show cause notice it has been observed in Para. 29 of the appellate order itself, that such a show cause notice does not appear to have been issued in the past except in a few cases only. This amounts to an implied admission that such notices were issued in certain cases in the past. One such case which is on the record is that of Shri Surajbhan Sharma vide Ext. W/24. In his evidence Shri Baljit has referred to a similar case of Shri Shyam Lal Tank.

74. Since the order of removal was passed by the General Manager, an appeal lay to the Managing Agents only under Rule 1016 of the Service Regulations. Rule 1020 provides that where the penalty of dismissal or removal from service... has been imposed, the appellate authority may give the employee either at his discretion or if so requested by the latter, a personal hearing before disposing of the appeal. The rule further provides that at this personal hearing the employee may be accompanied, if he so chooses, by another Railway servant or a trade union official, who is not a professional lawyer. In the memorandum of appeal Ext. MW12/12A dated the 13th February, 1964, Shri Baljit had specifically stated that he would like to place his case personally before the appellate authority and had asked for a personal hearing. This request was in accordance with the provisions of the Service Regulations quoted above but not only was Shri Baljit not given any personal hearing but this request of his does not find any mention in the appellate order. It is true that in Rule 1020 quoted above, the words used are that "the appellate authority may give the employee either at his discretion or if so requested by the latter, a personal hearing before disposing of the appeal" but, in my view, there must be strong reasons for denying to an appellant this privilege. It is significant that the rule provides not only for a personal hearing but also for the employee being accompanied by another Railway servant or a trade union official of his choice. To my mind there was no justification for denying this privilege of a personal hearing to Shri Baljit by the appellate authority, particularly in view of the fact that, as alleged before me without contradiction, there was no hearing or arguments even at the departmental enquiry although Shri Baljit was represented at the enquiry by Shri Y. D. Sharma.

75. It appears that following the communication of the order of removal to Shri Baljit he made a number of representations to the management in various forms. On the 17th May, 1963, he made a representation Ext. MW 12/12B-1, *appealing to the management* to review their decision about removal from service. In this representation he had, "without going into the merits of the case", drawn attention to the extreme severity of the punishment imposed on him after 18 years' of service in the Railway. To this a reply was sent to Shri Baljit by the General Manager which is Ext. MW12/12B-2 dated the 26th June, 1963 refusing to revise the previous decision in view of the "serious lapse on his part". Shri Baljit made a further representation Ext. MW12/12B-3, dated the 10th July, 1963, for being absorbed in a suitable post in the Railway in accordance with the standing orders. This was allegedly "without prejudice" to his contention in the appeal, dated 17th May, 1963." A further representation Ext. MW12/12B-4, dated 11th August, 1963, appears to have been made to the General Manager praying for reconsideration of the case on humanitarian grounds. Replies, if any, given to the last two representations are not on the record. It appears from the conciliation file of the Regional Labour Commissioner (C), which was summoned, that ultimately the union took up the matter in conciliation on the 25th December, 1963. During conciliation proceedings, however, an agreement Ext. W/9 was arrived at on the 12th February, 1964 in the presence of the Regional Labour Commissioner between the contending parties. According to this agreement the management's representative appears to have pointed out, during the proceedings, that Shri Baljit had not filed an appeal to the Managing Agents against the order of the general manager. It was thereupon agreed that the employee would file an appeal against the order of the General Manager to the Managing Agents and the management's representative gave an assurance that the General Manager would try to get the matter expedited and that the employee could raise an industrial dispute, if necessary, after the disposal of the appeal. Accordingly Shri Baljit filed a memorandum of appeal, along with a large number of enclosures, addressed to the Managing Agents, through proper channel, which is Ext. MW12/12A, dated the 13th February, 1964. The appeal, however, remained hanging fire for several months and it appears that the Regional Labour Commissioner had to issue a number of reminders to the Managing Agents in the light of the assurance given during conciliation proceedings. The first is Ext. W/30A which is an endorsement to the Managing Agents

by the Regional Labour Commissioner, dated the 14th April, 1964, on the application of the vice president of the union Shri Y. D. Sharma. Therein it was pointed out that the aim of the management appeared to have been to delay the conciliation proceedings by suggesting an appeal to the Managing Agents. Another reminder endorsed on a similar application of Shri Baljit himself is Ext. W/40, dated 24th April, 1964. By an application Ext. W/31A, dated the 2nd July, 1964, the union requested the Regional Labour Commissioner to re-start conciliation proceedings since nothing had been heard from the management on Shri Baljit's appeal. On the 13th July, 1964, there was a joint discussion between the representatives of the parties at which it appears to have been suggested that Shri Baljit's appeal be considered sympathetically by the Managing Agents and the management's representative had agreed to bring this suggestion to the notice of the Managing Agents. The relevant record is Ext. W/16A. On the 27th July, 1964, the Regional Labour Commissioner addressed another reminder to the Managing Agents drawing attention to the agreement on the 13th July, 1964, for a sympathetic consideration of Shri Baljit's case and for early communication of the management's decision. Further reminders to the management by the Regional Labour Commissioner are Exts. W/27A, dated 13th August, 1964 and lastly a letter, dated the 18th August, 1964 to the Deputy Chief Personnel Officer of the Martin's Light Railways. When there was no response to these reminders from the management the Regional Labour Commissioner appears to have sent a telegram Ext. W/44, dated 2nd September, 1964, to the Managing Agents asking for an expeditious decision of Shri Baljit's appeal. To this a reply, dated 3rd September, 1964, was received from the General Manager saying that the case of Shri Baljit was under the "very active consideration" of the Managing Agents and a reply would follow very shortly. The appellate order of the Managing Agents communicated to Shri Baljit after all these reminders is Ext. W/19 and bears the date "18-9-64". Strangely, however, this original appellate order admittedly bears the signatures of Shri L. H. Dass who is the Chief Accounts Officer of the Company and not a Managing Director or Director of the company. The signatures on this order appear in the following form:—

"PER PRO. MARTIN BURN LIMITED,

L. H. Das,

MANAGING AGENTS

18-9-64'

Rule 1019 of the Service Regulations lays down that the authority to whom an appeal lies under these rules *shall decide it himself* and shall pass such orders on the appeal as he thinks fit. In view of this provision and the nature of the original order received, as shown above, there has been an acute controversy before me as to whether the appeal was at all disposed of by the appellate authority himself namely the Managing Agents. In this connection there are certain significant circumstances to which my attention has been drawn. A carbon copy of this order appears to have been sent to the Regional Labour Commissioner also and the last page of this copy is Ext. M/42B which also appears to have been signed in the same fashion as Ext. W/19. This appellate order appears to have been forwarded to Shri Baljit along with a letter of the General Manager Ext. W/18, dated the 18th September, 1964 and the carbon copy to the Regional Labour Commissioner was forwarded through an endorsement Ext. M/42 of the same date by the General Manager on a copy of the letter to Shri Baljit. The appellate order has 14 pages and 31 paragraphs. On the 22nd September, 1964, however, a further letter Ext. W/20 was addressed to Shri Baljit by the General Manager which is in the following terms:—

"Dear Sir,

Please refer to your letter No. XD/SS/70/62 of 18th September, 1964 forwarding you a copy of the findings of the Managing Agents.

The signature and endorsement at the bottom of the finding after para 31 at page 14 should read as follows:—

MARTIN BURN LIMITED.

Sd/- S. GUPTA,

Managing Director

Copy forwarded to Shri Baljit Singh Sharma.

Per Pro. MARTIN BURN LTD.

Sd/-

Managing Agents.

Mr. L. H. Das, who was instructed to forward a copy of the finding to you, due to inadvertence, signed below "Per Pro. MARTIN BURN LTD." without showing the endorsement about it. The omission is regretted.

A copy of page 14 showing the correct endorsement is sent herewith. Please replace the page 14 of the finding sent to you with our above mentioned letter by the enclosed page 14.

Yours faithfully,  
Sd/-  
General Manager."

**Encl: 1**

76. As appears from the contents of Ext. W/20, a copy of page 14 showing the so called correct endorsement was sent along with the letter to Shri Baljit. That copy is Ext. W/21 and the signatures and endorsement on this copy are as follows:—

"MARTIN BURN LIMITED

Sd./- S. GUPTA,  
Managing Director.

Copy forwarded to Sri Baljit Singh Sharma  
Per Pro. MARTIN BURN LTD.,

L. H. DAS,  
Managing Agents.  
18-9-64"

A copy of the letter Ext. W/20 also appears to have been simultaneously endorsed to the Regional Labour Commissioner which is Ext. M/42A along with a similar copy of page 14 of the appellate order containing the so-called correct endorsement. This is Ext. M/40. It may be incidentally mentioned here that in para 31 of the appellate order itself, it has been stated that there had been some delay in disposing of the appeal due to the volume of the appeal, the numerous allegations and repelitions thereof made by Baljit at different places and the checking of various papers referred to by him etc. and the pre-occupation of the managing director himself in other matters.

77. Although this discussion does not directly affect the merits of Shri Baljit's case except to show the lack of bonafides on the part of the management and the manner of handling of Shri Baljit's case, certain indisputable facts have been placed on the record by the parties in attempting to show whether the appellate order could or could not have been passed by the Managing Director Shri S. Gupta. The nature of the original order Ext. W/19 first communicated to Shri Baljit containing the signatures of Shri L. H. Das, Chief Accounts Officer who is only an employee of the Managing Agents and the hurried correction which had to be issued subsequently by the management are circumstances which, according to the union, point to the truth of its contention in this matter, and I must say that these circumstances are in themselves intriguing. Then there is the balance-sheet of the Railway, Ext. W/37 for the year ended 31st March, 1964. At page 3 of this document is the report of the Directors dated the 3rd September, 1964 signed by Shri Roman Mookerjee as the chairman of the Board of Directors. In para 8 of this report it is stated that Shri S. Gupta proceeded outside India and the Managing Agents nominated Mr. Roman Mookerjee as their representative on the Board in the place of Mr. Gupta. This shows that on the 3rd September, atleast, Shri S. Gupta was not in India and Shri Roman Mookerjee was functioning as the chairman in his place. On the first page of the same document a notice issued by the Board of Directors has been reproduced. This is for the holding of the Annual General Meeting of the Company on the 29th September, 1964 and one of the resolutions shown in the agenda is that Shri S. Gupta, who is an associate of the Managing Agents of the Company be appointed a Director of the Company. This has been marked as Ext. W/37A. Since Shri Gupta appears to have been outside India for more than 3 months, his substitute had to be appointed according to the law on the subject. As the appellate order Ext. W/21 purporting to have been passed by Shri S. Gupta is dated the 18th September, 1964 and it is quite clear that Shri Gupta could not have been in India on the 3rd September, could he have arrived between the 3rd and the 29th September which was the date of the Annual General Meeting of the Company. On behalf of the management another balance-sheet Ext. M/45 of M/s. Martin Burn Limited for the year ended 30th

September, 1964, has been produced showing Shri S. Gupta as the Managing Director. This report contains a notice Ext. M/45A of the Annual General Meeting of the Company to be held on the 26th March, 1965. Item 5 of the agenda of this meeting is the resolution proposing re-appointment of Shri S. Gupta as a Managing Director of the Company with effect from the 1st May, 1965, for a further period of four years on the terms and conditions contained in an agreement dated the 29th January, 1965, between the company and Shri S. Gupta. In an explanatory statement at the bottom of this notice relating to item 5, it is stated that Shri S. Gupta, Managing Director of the Company whose term of office was to expire on the 30th April, 1965, was re-appointed by the Board of Directors as a Managing Director for a further period of four years with effect from the 1st May, 1965, on the terms and conditions embodied in the aforesaid agreement. This agreement, according to the management, shows that Shri S. Gupta was continuing as the Managing Director of M/s. Martin Burn Limited upto 30th April, 1965 and entered into an agreement with the company on the 29th January, 1965. The document, however, does not show necessarily that Shri S. Gupta was in India between the 3rd September, 1964 and 29th September, 1964. In any case it is not free from doubt whether Shri S. Gupta was at all in India on the 18th September, 1964, which is the date of the passing of the appellate order and whether he himself considered the appeal and disposed it of personally. In this connection the management has placed on the record, a carbon copy of the appellate order marked as Ext. MW/12/13 which purports to bear the signatures of Shri S. Gupta as the Managing Director at the conclusion of Para 31 or the last para of the order. Significantly this signature does not bear any date which is very unusual. If the carbon copy which is the office copy of the management bears the signatures of Shri S. Gupta made on the 18th September, 1964, then how is it that the original order Ext. W/19 which also should have been signed by him on the same date does not bear the signature and bears, instead the signatures of Shri L. H. Das. If Shri S. Gupta had really signed Ext. MW/12/13, which is the carbon office copy of the company, on the 18th September, 1964, how is it that he failed to endorse the date below his signatures. Even the so-called corrected copy Ext. W/21 sent to Shri Baljit does not bear the date of the order below the words "Sd/- S. Gupta," although it bears the date below the endorsement signed by Shri L. H. Das. If the carbon copy on the office file can be signed by Shri S. Gupta, the so-called corrected copy Ext. W/21 which is also a carbon copy sent on the 22nd September, 1964, could as well have been signed by Shri S. Gupta. Not only, therefore, was no personal hearing given to Shri Baljit in connection with this appeal but it is extremely doubtful whether the appeal itself was personally disposed of by any Managing Director. The appeal was also disposed of after inordinate delay and only after repeated reminders by the Regional Labour Commissioner. That only shows the callous attitude of the management towards the case of Shri Baljit if not actually a policy of victimisation or unfair labour practices.

#### Points No. 4 and 6

78. I have already shown that it was not a case of averted collision but even assuming that it was such a case it seems to me that the punishment meted out to Shri Baljit was in the circumstances of the case out of all proportions to his guilt. There is considerable evidence on the record to show that in previous instances of averted collision in the Railways under the management of M/s. Martin Burn Limited the punishment meted out to the employees found responsible for averted collision was comparatively light. In his evidence Shri Baljit has stated, without contradiction, that Shri Bashir Ahmed, driver himself was involved in a case of averted collision and that following the enquiry against him he was punished by a stoppage of increment for six months. MW12, Shri P. C. Mukerji, Traffic Superintendent, himself has admitted, in his evidence before me that in a case of averted collision on the A.S. Railway (Under Martin Burn Limited) in which a pointsman was held responsible for the averted collision, he was initially removed from service but was taken back on appeal. Certain documents of this case have been placed on the record. Ext. W/49 is the charge-sheet served on Shri Deomuni, Pointsman in connection with the averted collision, the charge having been that he failed to set and lock the points correctly for main line which remained set for loop line and this led to the averted collision between two trains. Ext. W/49A is the finding of the Enquiry Committee dated the 7th October, 1959, finding Shri Deomuni directly responsible for the accident and Ext. W/49B is the order, dated 12th November, 1959, of the District Traffic Superintendent removing Shri Deomuni from service. The Station Master concerned who was a co-accused in the case was charged for not issuing an accident message in time and in fact for issuing an incorrect message and also for not taking care to see that the points were correctly set for reception of



the train concerned. He was punished with the with-holding of his next increment for a period of six months. This order is Ext. W/49C. It appears from another document Ext. W/49D, dated 5th September, 1961 that Shri Deomuni was ultimately confirmed as a Porter and that even an increment of 50 nP. was granted to him in the Porter's post raising his salary from 35 to Rs. 35-50 nP. with effect from 9th December, 1960. This order shows, as admitted by MW12, Shri P. C. Mukerji himself, that Shri Deomuni was reinstated on appeal and also that he was transferred to another job. The witness (MW12) could not give any example of any S.M. or ASM having been removed from service on the charge of involvement in an averted collision in the Railways under the control of M/s. Martin Burn Limited. Another case on the record is that of Shri Ramjan, a Pointsman to whom a charge-sheet Ext. W/50 was served on the 29th March, 1963. The charge against him also was one of averted collision inasmuch as it was to the effect that while he was on duty at Salap Station, two trains 29 Up and 32 Dn. were admitted on line No. 2 and 1 at the same time. Ext. W/50A is the final order passed in this case on the 9th April, 1963, whereby his increment was stopped for six months with non-cumulative effect but he was allowed to resume duty. This is a case of the Howrah Amta Light Railway under M/s. Martin Burn Limited. The third case is that of Shri Ajit Kumar Sadhukhan, a Station Master of the Howrah Amta Light Railway to whom a charge-sheet Ext. W/50B was served on the 29th March, 1963 in connection with the same incident. He was also charged with the responsibility for averted collision by arranging crossing of 29 Up and 32 Dn. at his station. Ext. W/50C is the final order passed in this case on the 9th April, 1963 whereby the S.M. was punished with a fine of '03 nP. in the Rupee only and was allowed to resume duty. His absence during the period of suspension was treated as half pay. Another case placed on record is that of Shri B. E. Pandey, ASM, Arsh Railway. The finding against Shri Pandey was that after the averted collision he failed to issue an accident message and violated the rules in the Accident Manual and that the accident occurred due to the outer signal having been lowered by some outside agency. Ext. W/51B is a copy of the final order passed on 8th August, 1964, whereby Shri Pandey was punished for his negligence of duty by reverting him as a Booking Clerk for a period of one year while his period of suspension was regularised as leave due to him.

79. It will be seen that in no previous instance of averted collision in the Railways under M/s. Martin Burn Limited, has any Railway employee found responsible for averted collision or for non-observance of rules in such an incident been meted out such a drastic punishment as removal from service. In a case of the Rajasthan High Court reported in 1966 1 LLJ 245, one Sudarshan Lal Bajaj, an ASM at Dausa railway station in July, 1962 appears to have been punished by the Divisional Superintendent, Western Railway with reduction from the post of Assistant Station Master to that of a Traffic Signaller for two years with future effect from 9th May, 1963. It was an incident of an averted collision which occurred on the midnight of 30 and 31 July, 1962. The charge against the ASM was that he was responsible for violating certain orders at the time of reception of a train 5 Up and thereby endangered the safety of the travelling public by having given permission for lowering of signals for road (line No. 3) which was occupied by 872 down goods train. There would have been collision between the two trains, but it was averted as 5 Up stopped 408 feet and 6 inches short of engine of 872 down. I am not concerned with the result of the writ petition, in this case before the High Court and it is sufficient to note that the punishment meted out so recently in a State Railway for a case of averted collision to an Assistant Station Master held responsible for the occurrence was not more than reduction from a higher to a lower post.

80. From the above facts it is clear that even in a case of averted collision, there is no reported precedent on record of a punishment of removal from service having been meted out to a Railway employee. It is in evidence that Shri Baljit has been the secretary of the union since its inception in December 1957. He has stated that as secretary he had actually appeared as a witness on behalf of the union in about three or four disputes between the management and the union and had conducted several cases on behalf of the union before the Delhi Tribunal and the Lucknow Tribunal. He is also stated to have conducted, several times, negotiations on behalf of the union with the General Manager of the Railway. The precise number of cases or instances in which Shri Baljit conducted disputes on behalf of the union or appeared as a witness in any proceedings is, however, hardly material. It goes without saying that as secretary of the union since its inception, he must naturally have been taking part in trade union activities. Ext. W/34 also shows that he was recognised as a protected workman by the railway for the year ending 31st March, 1964.

While it is true that an incident did actually occur on 1st January, 1963 involving two passenger trains in the same block section and that it could have been a case of averted collision if the engines of the two trains had been *within one quarter* of a mile, at the time of stoppage, and while it is also true that Shri Baljit at the Noli end and Shri J. K. Sharma from the DSH end have been held primarily responsible for violating the instructions contained in the relevant rules leading to the occurrence and that the finding is not without reason, the punishment meted out to Shri Baljit is undoubtedly too harsh, in the circumstances of the case and it is difficult to believe that the harshness of the punishment is unconnected with his trade union activities. It is true that Shri J. K. Sharma also has been punished similarly but that does not necessarily prove that the treatment meted out to Shri Baljit was not discriminatory and it may be that in the circumstances of the case the management had no alternative but to treat Shri J. K. Sharma in the same way as Shri Baljit.

*Points No. 5 and 7.*

81. I have already held that it was a case of block irregularity and not of an averted collision and that Shri Baljit was only guilty of an error of judgment or a misconception in regard to the rules relating to his powers in such a situation. It is quite true that he had neither the power in such a situation to upset the sequence of trains in the programme system issued by him nor to cancel the programme or re-issue it, even assuming that he at all cancelled and re-issued it but he seems to have acted, in good faith according to his understanding of the rules by accepting Shri J. K. Sharma's note from DSH regarding the power position of 3 Up as an assurance that the 3 Up would not be allowed to leave DSH unless the engine of 10 Dn. reached DSH. Even if this presumption was unwarranted under the rules in the absence of a proper cancellation of the 3 Up train, there was reason to think that, in the absence of the programme copy which had found its way to Noli the 3 Up could not have moved from DSH. Although Shri Baljit, even in these circumstances, was not authorised to permit the 10 Dn. to leave Noli for DSH, it has to be borne in mind that according to his service record Ext. M/32 he had two previous warnings one in July, 1951 and another in January, 1954 for detention of trains and it is quite conceivable that in the light of these warnings and following the receipt of the message from DSH about the power position and the inadvertent receipt of the copy programme he committed an act of indiscretion. As already shown by me, his conduct in these circumstances falls under Para. 11, sub-para. iv, item (g) which provides for failure to observe rules and regulations not involving more severe disciplinary action. According to the sub-para. iv, only punishment of fine can be imposed for such a lapse which may not exceed half an anna in a rupee of his wages in accordance with the Payment of Wages Act, 1936. My finding, therefore, is that the punishment of removal of Baljit from service was not justified.

82. For the foregoing reasons I set aside the order of removal from service of Shri Baljit and direct that he be punished with a fine of half an anna in a rupee of the monthly wage drawn by him on the date of occurrence. His absence during the period of suspension will be treated as leave on half pay in accordance with the precedents from the Martin Burn Light Railways cited above. I further direct that Shri Baljit be reinstated with continuity of service and with full back wages within a period of one month from the date of the publication of this award subject to deductions of fine or any deductions relating to leave salary that may arise from my award. It would, however, be open to the management to reinstate him on a post other than that of a Station Master which is equivalent in grade to the post he was holding.

(One hundred thirty-seven pages)

Sd./- ANAND NARAIN KAUL,  
Central Govt. Industrial Tribunal, Delhi.

The 31st January, 1967.

[No. 2/26/64-LR. IV.]

S.O. 880.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Central Government Industrial Tribunal No. 2, Calcutta in the Industrial dispute between Martin's Light Railways and their workmen, which was received by the Central Government on the 24th February, 1967.

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, CALCUTTA

REFERENCE No. 123 OF 1966

PARTIES:

Employers in relation to the Martin's Light Railways,

AND

Their workmen.

PRESENT:

Shri S. K. Sen.—*Presiding Officer.*

APPEARANCES:

*On behalf of Employers.*—Shri P. P. Ginwalla, Bar-at-Law with Shri A. Choudhury.

*On behalf of Workmen.*—Shri S. K. Acharyya, Bar-at-Law with Shri D. L. Sen Gupta, Advocate. (Representing Martin's Light Railways Head Office Staff Union) Shri P. Das Gupta, Advocate appears for the Martin's Railways Staff Assocn.

STATE: West Bengal.

INDUSTRY: Railways.

AWARD

By Order No. 2/19/66-LRIV dated 1st September, 1966, the Central Government referred for adjudication an industrial dispute existing between the employers in relation to the Martin's Light Railways, Lalbazar Street, Calcutta and their workmen in respect of the matter specified in the following schedule:

1. Whether the scales of pay of the following posts at the head office of the Martin's Light Railways need revision? If so, to what extent and from what date?

<i>Post</i>	<i>Proposed Grade</i>
1. Section Head.	Rs. 160—10—260.
2. Clerk.	Rs. 80—5—130—7—200.
3. Stenographer.	Rs. 132—6—192—10—242.
4. Draftsman (Sr.)	Rs. 170—10—260—12—308.
5. Draftsman (Jr.)	Rs. 105—5—110—7—145—8—185.
6. Ticket Counter.	Rs. 60—2—80—3—95.
7. Lit. Sorter and Daftari.	Rs. 42—2—62—3—77.
8. Ticket Binder.	Rs. 42—2—62—3—77.
9. Pcon.	Rs. 35—1—40—2—60.
10. Armed Guard.	Rs. 48—1—53—2—73.
11. Darwans.	Rs. 40—1—55.
12. Car Drivers.	Rs. 70—3—100—4—120.
13. Waterman and Sweeper.	Rs. 35—1—45—2—55.

2. Whether the scheme of Dearness Allowance payable to Class III Staff at the head office of the said Railways needs to be revised. If so, to what extent and from what date?

3. Whether the rules relating to promotion should be changed to provide that all appointments to the higher categories of staff should be made by promotion from the existing staff in the next lower category on seniority-cum-efficiency basis and by automatic promotion to the next higher grade of those employees who are drawing the maximum of their grade for 2 years?

2. Item 1 of the schedule quoted above mentions the proposed grade, that is the grade claimed by Martin's Light Railways Head Office Staff Union for the 13

categories of clerical and class IV employees. The existing scales of basic grade pay are as follows:

Category	Existing scale.
1. Section Head.	Rs. 130—6—190.
2. Clerk.	Rs. 70—3—94—4—134.
3. Stenographer.	Rs. 110—5—160—EB—10—200.
4. Draftsman (Sr.)	Rs. 110—5—150.
5. Draftsman (Jr.)	Rs. 70—3—100.
6. Ticket Counter.	Rs. 50—2—80.
7. Lit. Sorter and Daftari.	Rs. 35—2—65.
8. Ticket Binder.	Rs. 35—1—50.
9. Peon.	Rs. 30—1—40—2—50.
10. Durwans.	Rs. 32—1—47.
11. Armed Guard.	Rs. 40—1—50—2—60.
12. Car Driver.	Rs. 60—3—90—2—100.
13. Waterman and Sweeper.	Rs. 30—1—45.

It should be mentioned that there have been three previous adjudications relating to the scales of basic pay and dearness allowance and other disputed points between the employers in relation to the Martin's Light Railways and their workmen including the Head Office employees. The first adjudication was by Shri F. Jeejeebhoy, Bar-at-Law, in Reference No. 2 of 1949, the award dated 3rd August, 1949 being published in the gazette of India of 3rd February, 1949. The second adjudication was by Shri A. Das Gupta in Reference No. 1 of 1957 and his award dated 3rd May, 1957, was published in the gazette of India of 1st June, 1957. The third adjudication was by Shri S. N. Guha Roy and his award dated 22nd June, 1962 was published in the gazette of India dated 14th July, 1962. The history of the rise in the pay scales as shown by these awards is interesting. In 1939 the lower grade clerks at the Head Office of Martin's Light Railways were divided into three grades, viz., 28—2/2—40, 43—3/3/2—58 and 60—5/2—75. In 1947 by agreement between the Union and the Management, the scales were raised to Rs. 50—3—80, 80—4—120 and Rs. 110—5—150 for a grade of General Assistants. The first two grades were amalgamated and in January 1951 an *ad hoc* increase of Rs. 10 was given converting the scales into Rs. 60—3—80—4—130 and 120—5—160. Shri Jeejeebhoy in his award gave a general direction in relation to the clerical staff of the Head office that where the present scale was less than 160/100 of the 1939 scales, the owners would give effect to the Bengal Chamber of Commerce scale so far as the starting pay was concerned. This however did not affect the scale of the lower grade clerks. By Shri Das Gupta's award the maximum was raised to Rs. 134 the scale being made into Rs. 60—3—90—4—134. Shri Guha Roy referred to the decision of the Labour Appellate Tribunal in *Caltex Employees' Union Vs. Caltex (India) Ltd.*, (1952 LAC 402), where the Labour Appellate Tribunal calculated the minimum wage of a middle class employee as Rs. 67·50 on the basis of basic requirements for food, etc., according to the data supplied by Dr. Aykroyd. The Labour Appellate Tribunal gave a margin of Rs. 12/8/- and fixed the minimum basic pay at Rs. 80 for the clerical staff, but the Caltex (India) Limited being a much more prosperous concern than the Martin's Light Railways, Shri Guha Roy thought that it would be sufficient to give a margin of Rs. 2/8/- on the minimum basic pay of Rs. 67·50 and so he fixed Rs. 70 as minimum pay for the clerical grade and converted the scale into Rs. 70—3—94—4—134 which is the existing scale. In respect of Section-In-charge of Section-hear the 1939 scale was Rs. 80—10/2—120. In 1947 by agreement this was raised to Rs. 120—6—180 and then in January, 1951 there was the *ad-hoc* increase of Rs. 10 converting the scale into Rs. 130—5—190. This scale remains unchanged by the awards of Shri Das Gupta and Shri Guha Roy. The scale of Stenographers in 1939 was Rs. 60—5/2—100 and this was raised in 1947 by agreement to Rs. 100—5—160—EB—10—200. This scale did not receive any *ad-hoc* increase and has remained unchanged under the two subsequent awards. In 1939 there was a post of Head draftsman which

was subsequently abolished. There were two grades of Assistant Draftsman which are described as Draftsman Senior and Draftsman Junior in Shri Guha Roy's award and the present order of reference. The senior scale was 43-5/2-58 in 1939 and this was made into Rs. 90-5-140 in 1947 and after the ad-hoc increase in January 1950 it became 100-5-150. The junior scale was 28-2/2-80 and this became Rs. 60-3-90 in 1947 and Rs. 70-3-100 after the ad-hoc increase of Rs. 10. Of the other grades, it would be sufficient to mention the case of Peons whose grade pay in 1939 was Rs. 16-1/3-20. In 1947 by agreement the peons were classed in 2 grades, viz., Rs. 30-1/2-35 and 35-1/2-40, which were later amalgamated into a single grade of 30-1/2-40. There was no change under Shri Das Gupta's award. Shri Guha Roy increased the maximum to Rs. 50 converting the scale into Rs. 30-1-40-2-50. Shri Guha Roy similarly raised the maximum of the scales of 7 other non-clerical categories by Rs. 10 viz., Ticket counter, Literate Sorter and Daftri, Ticket binder, Armed guard, Durwans, Car drivers, and Waterman—and—Sweeper.

3. In 1939 there was no dearness allowance. In 1947 the class IV staff in the Head office was given a flat dearness allowance at the rate of Rs. 24/- per month and office clerical staff Rs. 30/- per month. Shri Jeejeebhoy increased the flat dearness allowance of class IV staff by Rs. 7 and of the clerical staff in the office by Rs. 10 per month. Shri Das Gupta fixed D.A. of the subordinate staff at Rs. 40 per month upto the basic pay of Rs. 50/- and Rs. 45/- per month for basic pay of above Rs. 50. In respect of the clerical staff, he adopted a percentage scale similar to but lower than the Bengal Chamber of Commerce scale. At the time of his award the cost of living index for the middle classes was 411-414. Shri Das Gupta ordered that at that index of middle class cost of living the clerical staff would receive dearness allowance at 90 percent on the first 100, and 25 percent on the rest of the pay, and there would be rise or fall of 2 1/2% with each 10 points rise or fall in the cost of living index. Shri Guha Roy thought that there should be practically complete neutralisation for the rise in the cost of living by increased dearness allowance as regards the employees drawing pay upto Rs. 100. Accordingly for the clerical staff drawing upto Rs. 100, he ordered that the dearness allowance for the cost of living index of 471, which was the middle class cost of living index at the time of his award, should be 135 percent and that for every rise or fall of 10 points above or below 471 the dearness allowance should rise or fall by 5 percent. For the clerical staff drawing pay above Rs. 100 he directed that the existing scale of dearness allowance, i.e., the scale prescribed by Shri Das Gupta, would continue. For the class IV staff also Shri Guha Roy adopted a percentage scale of dearness allowance. The working class cost of living at the time of his award was 403. At that index Shri Guha Roy fixed dearness allowance for class IV staff at 115 percent of basic pay subject to a minimum of Rs. 40, and provided that for every rise or fall of 10 points the dearness allowance would rise or fall by 5 percent.

4. It would be mentioned that before both Shri A. Das Gupta and Shri Guha Roy the union claimed that the basic pay scale should be made the same as the scale adopted at the Head office of Martin Burn Limited and that the dearness allowance should be governed by the Bengal Chamber of Commerce scheme, which has been adopted for the Martin Burn Ltd. Head office staff. Both Shri Das Gupta and Shri Guha Roy rejected this claim. From Shri Guha Roy's award there was appeals preferred by both parties to the Supreme Court. The Supreme Court dealt with the question whether the demands of the workmen to be treated as part of the Managing Agent's staff, i.e., to be paid at the same scale as the clerks at the Head office of Martin & Burn Limited was justified, and confirmed the finding of Shri Guha Roy that the demand was not justified and that the workmen employed in the Martin's Light Railways Head office should be treated as Railway staff. As regards the claim of the union for the enhancement of the basic scale, dearness allowance and bonus and the claim by the company for reduction, the Supreme Court dismissed both the claims briefly by observing that the Supreme Court did not sit as a regular court of appeal over industrial tribunals and did not ordinarily subject the evidence before the tribunals to a fresh review unless it was shown that exceptional or special circumstance existed or that substantial and grave injustice had been done. The Supreme Court was not satisfied about the existence of a special circumstance or grave injustice and therefore rejected the claims of both parties and maintained the scales fixed by Shri Guha Roy. The judgement of the Supreme Court was passed on 16th March 1965.

4. On 19th July 1965 the union served a notice on the General Manager, Martin's Light Railways under Sec. 19 (6) of the Industrial Disputes Act terminating the award of Shri Guha Roy as confirmed by the Supreme Court by the judgement

dated 16th March, 1965 and also gave notice that on the expiry of 2 months from the date of the notice they would agitate for the improvement of the existing service conditions. This notice is Exhibit 2. The demand for improvement of the scale of dearness allowance by Shri Das Gupta's award. The result has been served in due course on the General Manager. There were some negotiations which proved abortive. The matter was then referred to the Asstt. Labour Commissioner, Central, Calcutta, for conciliation; but attempts at conciliation failed and so the dispute has been referred to the tribunal. In its written statement the union has referred to the anomaly resulting from the direction in Shri Guha Roy's award that clerical staff receiving basic pay upto Rs. 100 will get dearness allowance at 135 percent at the cost of living index of 471 with 5 per cent rise or fall for 10 point rise or fall in the price index, whereas the members of the clerical staff drawing pay above Rs. 100 would be governed as regards the scale of dearness allowance by Shri Das Gupta's award. The result has been that as soon as a clerical assistant passes the limit of Rs. 100 in respect of his basic pay his total emoluments decrease until he is drawing considerably above Rs. 100 as basic pay. At the time when the award was made, a clerk drawing the basic pay of Rs. 98 would receive Rs. 132.30 as dearness allowance and Rs. 22.5 as compensatory allowance at 22½%, the total being Rs. 252.35; when basic pay rose to next stage, Rs. 102, the dearness allowance would become Rs. 105.80, the compensatory allowance Rs. 22.95 and the total emoluments Rs. 230.75, there being a decrease of Rs. 21.60 in the total emoluments. Only when his pay would become Rs. 118, after 4 years, his total emoluments would again rise above Rs. 252.35. At the present cost of living index 595 for the middle class the anomaly is still greater; for at Rs. 98 the dearness allowance would be Rs. 191.80, and he would never reach that figure of dearness allowance even at the maximum of his pay at 134 at which stage the dearness allowance would be only Rs. 158.80. In view of this anomaly the union has strongly urged that the scale of dearness allowance for the clerical staff need revision. The union has pleaded for the Bengal Chamber of Commerce scale throughout. In respect of the basic pay, in a paragraph 16, the union has pleaded for the scale of pay for the Head Office Staff of Messrs Martin Burn Ltd. as the offices are situated close together and has also cited the scales of pay of three other mercantile firms with Head offices in the same neighbourhood, namely Sen Releigh Ltd., Tata Oil Mills Co. Ltd. and Martin & Harris Pvt. Ltd. It should be mentioned that at the hearing this union proved the scales of Martin and Harris Pvt. Ltd., and Sen Releigh Ltd. and not that of the Tata Oil Mills Co. Ltd., whereas Martin Railways Staff Association, which represents another section of the Head office employees, and which obtained permission to file written statement and to be heard in the Reference case proved the scales of pay at the Head office of Williamson Magor and Co. Limited. Apart from the claim for fixing revised scales of pay or the basis of the pay-scales of other Head offices situated in the same region, the union has urged that the revenue earnings of Martin's Light Railways have increased considerably since Sri Guha Roy's award and that the employees are entitled to share in the increased earnings. Another demand of the Union is for clear-cut rules for promotion, based on seniority and efficiency; the union contends that promotion at present depends largely on the discretion of the authorities, with arbitrary supersession; that Sri Das Gupta's directive about promotion to the grade of general assistants 120—5—160 is not being followed at present by the company, and that not only should that direction be enforced, but provision should be made for promotion whenever an assistant has been at the top of his grade-pay for two years, and the assistants should have scope for promotion to the officer's grade also.

5. As regards the other union, the Martin Railways Staff Association, a separate reference order has been received after the conclusion of the hearing of the present case and it is therefore not necessary to consider the contentions of the Staff Association in this case.

6. On behalf of the management the defence taken in the written statement is that no material change in the circumstances has taken place warranting revision of the grades and scales of pay or the dearness allowance after the same was settled recently by Shri Guha Roy and confirmed by the Supreme Court; that the employees of the Head office of the Martin's Light Railways are not entitled to the emoluments received by the Head office staff of Martin Burn Ltd. at No. 12 Mission Row; that there is no category of Senior Draftsman or Junior Draftsman but only the category of Draftsman with the scale of Rs. 100—5—150; that there has been no increase in the revenue earnings of Martin's Light Railways and that promotion is not given arbitrarily but is granted on consideration of seniority cum suitability; and that rigid rules taking away the discretion of the Management would be detrimental to discipline and efficiency.

7. At the hearing Shri P. P. Ginwalla appearing on behalf of the management has urged that the claim to the same scales of pay as the Martin Head office staff and to revision of the grades and scales of pay and dearness allowance as awarded by Shri Guha Roy and as confirmed by the Supreme Court, is barred by *res judicata*. In this connection he has referred to a number of decisions. In AIR 1957 SC 38 (Messrs Burn & Company Ltd. Vs. their employees) it was held that Section 11 of the Civil Procedure Code is no doubt in terms inapplicable to the Industrial Disputes but the principle underlying it is founded on sound public policy and has universal application; and there are good reasons why the principle should be applicable to decisions of Industrial tribunals also; that if the court is to hold that an adjudication loses its force when it is repudiated under Sec. 19(6) and that the whole controversy is at large, then the result would be that far from reconciling themselves to the award and settling down to work, either party will treat it as a mere stage in the prosecution of prolonged struggle; and far from bringing industrial peace the awards would turn out to be but truces giving the parties breathing time before resuming hostile action with renewed vigor. In another case, AIR 1959 SC 529 (Messrs Burn & Co. Ltd. Vs. their workmen) a revision made by an Industrial tribunal 5 years after the settlement of scales of basic pay and dearness allowance by agreement was set aside because there was no finding that existing scales of pay as settled by the agreement were inadequate, nor was any principle enunciated to justify alteration of the grades and scales of pay which had been fixed by agreement and nothing was pointed out to show that in the 5 years circumstances had so altered as to make the existing grades and scales of pay unreasonable and inadequate. It should be mentioned however that the applicability of principle of *res judicata* in cases before the industrial tribunal has not been accented in other cases, particularly when the dispute relates to the wage scales and the dearness allowance. Reference may be made to AIR 1964 SC 728 (Workmen of Balmer Lawrie & Co. Vs. Balmer Lawrie & Co. Ltd.). In that case it was held that wage scales are devised as a matter of long term policy and industrial adjudication would naturally be to reluctant to interfere with the wage structure without justification or in a light hearted manner; and normally it should remain in force for a fairly long period; but it would be unreasonable to introduce consideration of *res judicata* as such, because for various reasons which constitute the special characteristics of industrial adjudication, the said technical considerations would be inadmissible; and that the principle of gradual advance towards the living wage itself constitutes such a special feature of industrial adjudication that it renders the application of the technical rule of *res judicata* singularly inappropriate. In AIR 1966 SC 976 (Workmen of WIMCO Vs. WIMCO Ltd.) it was held that an award cannot ordinarily be revised unless there is a change in the circumstances on which the award is based, but the court can revise an award pertaining to dearness allowance on taking notice of the fact that the cost of living has gone up since the award, and the rise in the cost of living is in itself a change of circumstance.

8. So far as the claim of the union to the same scales of pay as the Head office of Martin Burn Ltd., at 12 Mission Row is concerned, that claim must however be considered barred by *res judicata*. That claim was not raised in the Reference case before Shri Jeejeebhoy. Before Shri Das Gupta it was raised but Shri Das Gupta negatived it. It was again raised before Shri Guha Roy; Shri Guha Roy not only negatived it on merits but also on the ground of *res judicata* because of Shri Das Gupta's decision. The Supreme Court also decided this question, holding that the demand of the employees to be treated as part of the Managing Agent's staff, i.e., to receive the same scales of pay as the Head office staff of Martin Burn Ltd., at 12 Mission Row, was not justified. After that decision it is no longer open to the employees at the Head office of Martin's Light Railways to claim that they should get the scales of pay applicable to the Head office staff of Messrs Martin Burn Ltd., at 12, Mission Row, Calcutta.

9. It is because of the realisation of this bar that the union has given evidence as to the scales of pay and dearness allowance given to the Head office staff of certain other concerns which according to them are comparable units. P.W. 1, Bhupendra N. Banerjee an employee of Messrs Martin and Harris Pvt. Ltd., has proved the pay scales at the Head office of that firm, and P.W. 7 Santi R. Guha Roy, an employee of Messrs Sen Raleigh Ltd. has proved the pay scales of the Head office of that firm; P.W. 5, Balaknath Ghose, examined on behalf of Staff Association has proved the pay scales at the Head office of Messrs Williamson Mazor and Co., Ltd. These three firms are mercantile firms which are members of the Bengal Chamber of Commerce, as the witnesses have admitted and in respect of dearness allowance they all follow the Bengal Chamber of Commerce scale. Their pay scales though differing from one another are also fairly high. The reference to their pay scales and dearness allowance is practically an attempt

by the union to get over the bar of the *resjudicata* in the matter of the claim for scales of basic pay and dearness allowance equal to that in force for the Head office staff of Martin Burn Ltd. The Union claim to grades and scales of pay similar to that in the Head office of the three concerns is based on the principle of fixation of pay-scales, etc., on the region-cum-industry basis recognised in several adjudications by Industrial Tribunals. Shri P. P. Ginwalla has urged that all these three mercantile firms are very prosperous firms and further the union has not offered any evidence from which it could be held that these firms are comparable to the Martin's Light Railways. In AIR 1964 SC 728 (Workmen of Balmer Lawrie and Co., Ltd. vs. Balmer Lawrie & Co. Ltd.) to which reference was made before in another connection, it was held that documentary evidence of the total capital, extent of business, the order of profits, the dividends paid, the number of employees, the firm's standing in the industry and other similar matters must be produced before the tribunal and only then it could decide the question whether the concern is comparable to another in the matter of fixing wages and that the matter cannot be decided merely by intersted oral evidence. In the present case the union has merely produced witnesses to prove the statements of the scales of pay drawn by the different categories of employees at the Head office of the concerns. The witnesses did not produce the balance sheets from which the total capital, the extent of business, the dividend paid, etc. could have been ascertained. It is clear however from the evidence of PW 1, 5 and 7 that the three firms are very prosperous and their pay scales therefore cannot be a guide in the matter of fixing the scales of pay for the Head office staff of the Martin's Light Railways. Shri S. K. Acharyya has referred to AIR 1964 SC 689 (Graves Cotton & Co. Ltd. Vs. their workmen) in which, after referring to the industry-cum-region formula as the basis for fixing wage scales and dearness allowance, it was observed that in applying this formula the tribunal should lay stress on the industry part if there is a large number of concerns in the same region carrying on the same industry; but where the number of industries of the same kind in a particular region is small, it is the region part of the formula which assumes importance, particularly with reference to the clerical and subordinate staff. Shri Acharyya has urged that since there are not many other Head offices of Light Railway Companies in the La'bazar Region of Calcutta, the pay scales of Martin & Harris, Williamson Major and Co. and Sen Raleigh Ltd. ought to be considered as comparable concerns. But, as already pointed out above in the absence of evidence as to total capital, extent of business, etc. it cannot be decided whether these concerns are comparable concerns and from what evidence there is, they all appear to be more prosperous than Martin's Light Railways.

10. The management has examined a number of witnesses to prove that the Martin's Light Railways have no capacity to pay a higher scale of pay or dearness allowance. An objection was raised by Shri Acharyya that it was not definitely pleaded in the written statement of the management that they did not have the ability to meet the demand of the employees for increased pay and dearness allowance. It is true that in the written statement, the management did not expressly say that they do not have the capacity to meet the demands for higher wages and dearness allowance, but it was mentioned in the written statement by the management that none of the 5 Light Railways which the managing agents were managing was in a prosperous condition. Moreover, it appears from the conciliation Officer's report that the plea of inability to pay any higher wages and dearness allowance was expressly taken before him. In the circumstances, the management was permitted to give evidence on the point of their ability or inability. Management's witness No. 2, M. P. Bhatnagar, Chief Engineer of Martin's Light Railways, stated that the provision made in the budgets of the several Light Railway, was insufficient to meet the requirements for maintenance of the tracks, bridges, buildings, etc. to the proper standard and that rails and wooden sleeper have to be retained in service for much longer than their normal span of useful life as mentioned in the General Code of the Indian Government Railways. He proved 5 charts prepared by himself, marked Ext. G to G4, showing the amount that each of the Light Railways would require for maintenance upto the proper standard on renewals of sleepers and rails which have reached or exceeded their normal life span. The total estimate made by him as required for renewals and replacements as prescribed by the General Code is Rs. 38 lakhs odd. Management's witness No. 3 Lokendra N. Choudhury, Chief Mechanical Engineer, stated that for want of sufficient funds the Railways could not replace the locomotives wagons and bogies on the expiry of their normal life span and have to keep them in service for a much longer period. He also made certain charts, Exts. H to H4 showing the amount of money that would be required for replacing the locomotives, wagons and bogies which have served out their normal span of life as mentioned in the Indian Government Railways General Code. The total amount



required for the 5 Railways for the purpose as estimated by him is over 1½ crores. It may be conceded that the Light Railways do not have the capacity to undertake renewals and replacements to the extent indicated by the two witnesses. The total share capital of the five Railways taken together is Rs. 80.10 lakhs; and the general reserves of the five railways added upto Rs. 38.23 lakhs on 31st March, 1966; the total reserve come down to that figure from 44.37 lakhs on 31st March, 1961. Clearly the Railways cannot find nearly two crores for renewals and replacements to the ideal standard laid down in the General Code of the Indian Railways. But the tracks, locomotives, etc., are being kept up to the required standard of safety for the carrying of passengers; certificates to that effect are given in the last page of each of the Balance sheets Ext. A series to Ext. E series, signed by the General Manager of the Light Railways, and countersigned by the Additional Commissioner of Railway Safety, Government of India. Hence while the inability to reach a better standard of maintenance has to be kept in mind, this inability need not seriously be considered in connection with the question of fixing the wage scales and dearness allowance of the employees.

11. More important is the annual revenue account of the five light railways. Management's witness No. 5, Lala Himangshu Das, Chief Accounts Officer of Martin's Light Railways proved statements, Ext. J series, prepared from the balance sheets of the 5 Railways for the 5 years from 1961-62 to 1965-66. Ext. A series to Ext. E series, showing the gross earnings, working expenses, net profit or loss, dividends paid and other details. It appears that while the gross earnings of each of the railways have generally increased from year to year, the working expenses have increased still more. Four of the railway systems, namely, Howrah-Amta Light Railways, Howrah-Sheakhalla Light Railways, Arrah-Sasaram Light Railway and Futwah-Islampur Light Railway have shown some net profit although small, during these 5 years, the Shahdara-Saharanpur Light Railway which has the highest mileage of these 5 railways systems has steadily been showing a net loss during all these years. The net loss shown by this railway for 1961-62 was Rs. 13,381. This has increased to Rs. 2,60,379 in 1965-66. This loss shown by the Shahdara-Saharanpur Light Railway is responsible for the reduction of the total net profit of the 5 railway systems from Rs. 2,74,364 in 1961-62 to only Rs. 94,086 in 1965-66. Shri Ginwalla has urged that in view of the fall in the net profit it is absolutely impossible for the five railways to bear any further expenditure under the head of staff remuneration and therefore any increase in the dearness allowance or in the scales of basic pay would be a burden which they are unable to bear. From a scrutiny of the statements Ext. J series, and the balance sheets (marked Exts. A to A4, B to B4, C to C4, D to D4 and E to E4) it appears that 4 of the railways except Shahdara-Saharanpur railways have been paying dividends during the 5 years under consideration and last year a dividend was paid at the rate of 4 percent by all these 4 railways. The steady net loss which is being suffered by the Shahdara-Saharanpur railway is a point which needs the management's close attention. It must be possible by some steps to plug the holes which are causing the loss. As already stated, it has got the highest mileage of all the 5 railways and gross earnings show steady increase from year to year and it must be possible to ensure that the working expenses do not rise unduly high so as to eat up the whole of the gross earnings. It appears that the Managing Agents have recently posted a Deputy Chief Engineer at Saharanpur to bring about an improvement as far as possible. Let us hope that he will succeed. In any case, the five Railway systems taken together have still some net profit, and they should be able to bear the burden of some increase, even taking into consideration the fact that another tribunal has awarded some increase in basic pay and dearness allowance to the line staff of the five railways. Pay and allowances of the staff must come before Dividends. If necessary, the Managing Agents may also reduce the bonuses to the minimum prescribed by the Payment of Bonus Act.

12. The anomaly in the matter of dearness allowance which has been pointed out by the union in respect of the clerical staff is something that needs to be remedied. Shri Ginwalla has urged that the anomaly in the dearness allowance was one of the grounds of appeal to the Supreme Court against the award of Shri Guha Roy, but the Supreme Court did not find any gross injustice and refused to enter into the merits of the case, and upheld the scales of basic pay and dearness allowance as fixed by Shri Guha Roy. It has been urged therefore that the Supreme Court having decided that there is no gross injustice, the anomaly cannot now be rectified by this tribunal. But as already mentioned, the Supreme Court did enter into the question of merits. The Supreme Court pointed out that it did not sit as a regular court of appeal over industrial tribunals. The point involving question of law namely whether the demand of the workmen that they would be treated as part of the managing agent's staff was justified was considered in detail by the Supreme Court but beyond that point involving some question of

law the Supreme Court did not consider any other point at all. It would appear, therefore, that the fact that there is an anomaly in the matter of dearness allowance of the clerical staff was not considered by the Supreme Court. The ward of Shri Guha Roy as confirmed by the judgement of the Supreme Court has been terminated by a notice under Sec. 19(6) of the Industrial Disputes Act by the union, and while it may be true that a mere termination notice under Sec. 19(6) does not reopen the whole controversy, there is the rise in the cost of living index from 471 at the time of Shri Guha Roy's award to 595 in December, 1966, which rise has further accentuated the hardship from the anomaly in the matter of dearness allowance, and therefore the question of the dearness allowance and the scales of pay can be examined again in this Reference case.

13. The claim of the union for a substantial increase in the scales of basic pay and at the same time, for a higher scale of dearness allowance on the higher basic pay is clearly unsustainable. On behalf of the union it has been urged that the present price level the minimum wage required by a three-unit middle class family, on the basis of norms laid down by the 15th Indian Labour Conference held at New Delhi on 11th and 12th July 1957 and Dr. Aykroyd's scale of balanced diet is Rs. 341.75 per months, *vide* Ext. 3, and it has been urged that the grades of basic pay and dearness allowance should be so fixed as to bring about this minimum wage. Shri Guha Roy's award refers to the view of the Labour Appellate Tribunal in *Caltex Employees Union Vs. Caltex (India) Ltd.* (1952 CAC 402) that Rs. 67.50 (excluding the margin of Rs. 12.50) is the minimum wage for a middle class family according to the scale of diet prescribed by Dr. Aykroyd, at the prices then prevalent. For subsequent rise in prices it has not been the practice of the Industrial tribunals to give full neutralisation by increase of the pay scales and dearness allowance but only to give partial neutralisation. A claim for the minimum wage worked out for a 3 unit family at the present prices would mean that the union is claiming full neutralisation of the rise in the price level. While the claim may be not unreasonable, it has to be held that no employer and particularly no employer with slender resources like Martin's Light Railways can meet this demand. Moreover, a middle class employee does not usually have a 3 unit family at the start of his service. It would not be unreasonable to fix total remuneration at the start on a two-unit basis, raising to a three-unit basis after a few years, with some margin at the end of the scale. The management has proved the pay scales and the dearness allowance fixed at the Head office of a comparable concern, namely Messrs Mcleod and Co.'s Head office Railway department, *vide* evidence of Management's witness No. 4, Satish Chandra Ghose, and Ext. I. Messrs Mcleod & Co. Railway department, manages the Ahmadour-Katwa Railway and the Bankura-Damoder River Railway. These railways are in the process of being taken over by the Central Government which has already taken over one other railway which was administered by Mcleod & Co., namely Burdwan-Katwa Railway; but the Head office of Mcleod Railway Deptt. is still functioning with a staff of 68. It appears from Ext. I that Mcleod & Co. has adopted the Government scales of pay. The Government have by the revised pay scales substantially increased the basic pay of both the clerical and the subordinate staff. But, naturally the dearness allowance is much less than the scale adopted by the Bengal Chamber of Commerce for mercantile firms. The pay scale of the lower grade clerk which was Rs. 60-3-84 4-110-5-130 since 1948 now stands at Rs. 110-3-131-4-155-4-175-5-180 and the pay scale of grade I clerks which was previously Rs. 80-5-120-8-160 now stands at Rs. 130-5-160-8-200-EB-8-256-EB-8-280-10-300. The revised pay scale of the peon or class IV staff is Rs. 70-1-85. The dearness allowance as revised with effect from 1st August 1966 is Rs. 47/- when the grade pay is below Rs. 110/-; Rs. 70/- when the grade pay is Rs. 110/- and above but below Rs. 150/-; Rs. 90/- when it is Rs. 150/- and above but below Rs. 210/-; Rs. 110/- when it is Rs. 210/- and above but below Rs. 400/-; and Rs. 120/- when it is Rs. 400/- and above but below Rs. 1000/-. The total emoluments of a lower grade clerk after taking into account the dearness allowance, compensatory allowance and the house rent, come to Rs. 211/- (starting) to Rs. 311.40 (top of the scale) and that of a peon, Rs. 139.50 to Rs. 155.50. The head office of Martin's Light Railways should, in my opinion, have a comparable scale because it is also the head office of managing agents of light railways like the head office of Railway department of Mcleod & Co. and moreover it is expected that ultimately Martin's Light Railway will also be taken over by Central Government and total emoluments ought not to be substantially higher than the emoluments received by similar offices of the Government. If the dearness allowance is to be according to the Bengal Chamber of Commerce scale or even according to Shri Guha Roy's scale which for a pay upto Rs. 100/- is equal to the Bengal Chamber of Commerce scale it is clear that the basic pay cannot be increased except where the total emoluments including allowance are less than the total emoluments of the corresponding category of employees in the Head office of the Railway department of Mcleod & Co. or except where for

any special reason the basic pay scale needs revision. The union does not want that the dearness allowance should be substantially reduced to the fixed slabs of dearness allowance prescribed by the Government in their latest circular. Class IV staff, under Shri Guha Roy's award is now entitled to Dearness allowance at 210% of their basic pay, and the Dearness allowance of class IV staff, not being included in the terms of reference, cannot be altered by this tribunal. Neither is it contemplated that the scheme of dearness allowance for class III staff should be radically altered by the tribunal; only the anomaly caused by Shri Guha Roy's award has to be removed by the necessary amendment of the scheme. It is necessary to decide first, therefore, what the amended dearness allowance scale should be before the scales of basic pay can be considered.

14. In respect of class III staff, Shri Guha Roy's award prescribed 135 percent of the basic pay for persons drawing pay upto Rs. 100/-, the cost of living index then being 471 and he recommended that there should be rise or fall by 5% for every 10 points rise or fall in the cost of living index. At the present index of 595 this works out to 195 percent. Under the Bengal Chamber of Commerce scheme the dearness allowance on the first 100 of basic pay at the present cost of living index is 210. Shri Guha Roy practically gave that amount by taking into consideration 15 percent of the compensatory allowance given by the management. It may be mentioned that compensatory allowance was 22½ percent when Shri Guha Roy heard the reference case. But the award shows that the case of the management was that the increase by 7½ percent in the compensatory allowance, had been given as a compensation for reduction of the bonus. From 1955 to 1957 bonus was paid at the rate of 2½ month's basic pay or 1½ month's pay plus Rs. 75/- whichever was higher. There was fall in the net earnings of the Railways and there was negotiation about bonus between the manager and a deputation of the employees, and in the course of discussion the General manager agreed to pay bonus at 1½ month's basic wages in Sept. 1959 and announced that from 1960 the compensatory allowance would be increased from 15 to 22½ percent, the additional 7½% being equal to basic pay for 27 days, and bonus would be paid at the rate of one month's basic pay. Before Shri Guha Roy the union claimed a higher bonus but in view of the meagre net earnings of the Railways and in view of the increased compensatory allowance, Shri Guha Roy felt that one month's basic wage was a reasonable amount for the bonus. It is for this reason that out of total compensatory allowance only 15 percent was taken into account in calculating the dearness allowance for the clerical staff drawing a pay upto Rs. 100/-. In the present reference case the management has filed certain statements as to total remuneration by taking the compensatory allowance as 22½%, but the union has objected that the compensatory allowance should be taken to be 15 percent for the purpose of calculating the total emoluments and that the remaining 7½ percent should be regarded as payment on account of bonus. In view of the decision on bonus in Shri Guha Roy's award, I must accept the contention of the union that only 15% of the compensatory allowance should be taken into account in calculating the total emoluments. It naturally follow however that when in future bonus is fixed in accordance with the Payment of Bonus Act, 1965 it will be open to the management to withdraw 7½ percent from the compensatory allowance, this being part of the agreed bonus now paid. For class III staff drawing above 100 in basic pay, Shri Guha Roy directed that the scale of D.A. prescribed by Shri A. Das Gupta would apply, and at that scale, at the price index of 595, the D.A. for the first 100 is 135% and for the balance, 70%. Taking only 15% of the compensatory allowance, and calculating the dearness allowance admissible under the present scale of living index, it appears that the total emoluments of a lower grade clerk of Martin's Light Railways at the start of his service come to Rs. 217/-. The total emoluments of a lower grade clerk at the Mcleod Railways Head office work out at Rs. 211/-. It is clear, therefore, that there is no reason for increasing the starting pay of the clerical grade of Martin's Light Railways Head office which was fixed at Rs. 70/- by Shri Guha Roy. At the maximum of the scale the total emoluments of the lower grade clerk in the Mcleod Railways Head office work out at Rs. 317.40 while that at the Martin's Light Railway Head office works out at Rs. 312.90. The two totals are about the same but the anomaly is that when the clerk reaches Rs. 98/- of the grade pay, in the Martin's Light Railways Head office, his total emoluments come to Rs. 303.80, but when it becomes Rs. 102/-, the total emoluments fall to Rs. 251.70, and take eight years more to rise to Rs. 312.90. It is, therefore, necessary to remedy this anomaly. Shri Glnwalla has suggested that the anomaly can be remedied by providing that when a clerk passes Rs. 100/- mark he should continue to draw the same dearness allowance as he was last drawing before he passed the 100 mark, until under Shri Das Gupta's scale his dearness allowance equals or exceeds that figure. This would mean (at the price index of 595) that for the lower grade clerk, the D.A. of Rs. 191.10 earned at the basic pay of Rs. 98/- would remain fixed until the end of

his scale (Rs. 134) but he would receive the increment of Rs. 4/- and 60 in compensatory allowance per year, and his total emoluments at the end would be Rs. 345.20. This total no doubt compares favourably with the total remuneration at the top of his grade received by lower grade clerk in Mcleod & Co.'s Head office, Railway Department, and would be much better than the state of things at present. But there would still be some anomaly, for the staff with basic pay rising from 70 to 100 and again from 185 upwards would get increase in D.A. with every rise of grade pay, while staff drawing pay rising from 100 to 185 would get no increase in the D.A. This would make for discontent. It would be more equitable to provide that for the first 100 of his pay, when his pay exceeds Rs. 100/- a clerk should draw dearness allowance at the scale provided by Shri Guha Roy for pay upto Rs. 100/- and thereafter for the balance of his basic pay above Rs. 100/- he should draw dearness allowance at the lower rate prescribed by Shri Das Gupta viz. 25 percent at the index of 411 to 420 and 70 percent at the index of 591 to 600. In other words, at the present middle class cost of living index, the dearness allowance will be 195 percent on first 100 and 70 percent on the balance when the pay of a clerk exceeds Rs. 100/-. Under this scheme, the total emoluments of a clerk drawing Rs. 134/- as basic pay would be Rs. 372.90. Shri Das Gupta provided a uniform scale of dearness allowance for the whole balance above Rs. 100/-. In the Bengal Chamber of Commerce scheme however there is a difference between second 100 and 3rd 100 and the balance also. For the first 100, for 10 points rise in the cost of living index the rise in the dearness allowance is 5 percent; for the second 100 it is 2½ percent and for the 3rd 100 and the balance it is 1½ percent. In other words, the scale of dearness allowance for the 3rd 100 and the balance is half of that for the second 100. In view of the substantial increase in the dearness allowance on first 100 of basic pay, I think that for the 3rd and subsequent 100 the dearness allowance should be half of that fixed for the second hundred; at the present cost of living index, it will be 35 percent. The scale of dearness allowance prescribed no doubt makes the total remuneration at the maximum of the grade pay higher than that in Mcleod's Head office (Railway Department), but it may be mentioned that the Government scale which have been enforced in that office are likely to be increased as the result of Gajendragadkar's report.

15. Next, I turn to the scales of basic pay. So far as the Section head, clerk and Stenographer are concerned, I see no reason for increasing the basic pay scales because the total emoluments with compensatory allowance at 15 percent and the dearness allowance at the scale mentioned above works out at Rs. 365.50 to Rs. 476.50 for the Section head and Rs. 217 to Rs. 372.90 for the lower grade clerk and Rs. 347 to Rs. 421 for the General Assistant of the grade Rs. 120—5—160 and for the stenographer, Rs. 328.50 to Rs. 495. The total starting emoluments are comparable to the total starting emoluments in the Railway department of Mcleod & Co. But the total emoluments at the maximum of the grade are substantially higher under the scheme of dearness allowance set out above. Therefore, there is no scope for increasing the basic pay any further. So far as the draftsman's scale is concerned, Rs. 100—5—150, the total emoluments, even allowing the higher Dearness Allowance, come to substantially less than that of the similar post at Mcleod's. A draftsman needs a technical training diploma for which he has to undergo training for 3 years. He therefore should get a higher starting pay, and slightly longer scale, and I fix Rs. 110—5—170. The total emoluments come to Rs. 318.50 to Rs. 439.50 which are comparable to the total emoluments of the draftsman at Mcleod & Co.'s railway office. There is now no post of draftsman (junior) at Martin's Railway Head office, according to the evidence and so no revised scale for that post is called for.

16. The remaining categories are non-clerical staff. Shri Guha Roy increased the maximum of the basic pay of these grades by Rs. 10/- or Rs. 15/- except in the case of the darwan where the maximum was increased by Rs. 7/-. With dearness allowance at 210%, at the present cost of living index, on the basis of Sri Guha Roy's award, and 15% compensatory allowance, the remuneration of these posts at the top of the grade exceeds the maximum remuneration of corresponding staff at Mcleod's. There is no reason therefore for further increase of the maximum of the grade for these categories Shri Acharyya has however urged that in these categories the starting pay, which was not increased by Shri Guha Roy, is too low and the emoluments of a fresh recruit to these grades are less than that of a fresh recruit in the corresponding grades in Government office. There appears to be some truth in this contention. The total starting remuneration of a peon works out at Rs. 100.50 with dearness allowance at 210 percent of his pay and compensatory allowance at 15%. Whereas in the Government offices the total starting emolument of a peon is Rs. 124.50 without including the house allowance. The same also applies to the other categories except car drivers. An increase of Rs. 5/- in the starting in each grade however would after taking into consideration the increased dearness allowance practically bring up the pay of these categories of employees to

the Government scale. House rent allowance is not given by Martin's Light Railways, to employees at the Head office but they get an extra 7½% in compensatory allowance, and one month's basic pay as bonus which the Government servants do not receive. I would, therefore, increase the pay scales of these categories by Rs. 5/- at the start and refix the scales as follows:..

Ticket counter	Rs. 55—1—60—2—80
Literate Sorter & daffri	Rs. 40—1—45—2—65
Ticket binder	Rs. 40—1—50
Peon	Rs. 35—1—40—2—50
Armed guard	Rs. 45—1—50—2—60
Darwan	Rs. 37—1—47
Waterman & Sweeper	Rs. 35—1—45

No change is required in the scale of the car driver as his total emoluments at the start come to Rs. 195/- and at the end of the scale to Rs. 325/- which is considered sufficient remuneration for him.

17. In respect of the categories in which an increase in the starting pay has been directed, there is the question of fixing the pay of the incumbent. So far as the draftsman is concerned, there is no difficulty; the incumbent will receive an addition of Rs. 10/- in his basic pay, and the extra dearness allowance and compensatory allowance admissible thereon. In the case of the non-clerical categories, those who have put in upto 5 years' service will have their basic pay refixed as if the new scale was in force from the beginning of his service, provided that his basic pay is not adversely affected. Those who have put in more than 5 years' will have such marginal adjustments as may be necessary to see that their basic pay is not lower than that drawn by an employee of his category with less length of service, dearness allowance, etc. will be fixed on the newly fixed pay.

18. This disposes of the first two points raised for adjudication. The third point relates to rules relating to promotion. On behalf of the union it has been urged that promotions are made arbitrarily at the discretion of the management and that while there is a Selection Board for considering promotions to the grade of Head clerk there is no such Selection Board for considering the cases of promotion from lower grade clerks to Section Heads, but that the promotion is given by the Head of the department concerned on the basis of seniority plus suitability. The union considers suitability as an uncertain criterion and would like to see the criterion of seniority plus efficiency adopted. On behalf of the management it has been urged that an employee who may be efficient as a lower grade clerk may not be suitable for the work of the Section head and that a man who is efficient as Section head may not be suitable for the post of Head clerk. But it is hardly possible to say before an efficient lower grade clerk has been tried out as Section head or an efficient Section head has been tried out as Head clerk whether he would be equal to the job. At the same time, apart from the ability to do the job properly, some other quality is required in a Section head, Head clerk, e.g., tact in dealing with the staff of his Section and ability to get proper work out of them. Therefore, suitability cannot altogether be disregarded. The question as to the procedure for promotion was also considered by Shri Jeejeebhoy in his award made in 1949 and his direction on the point appears to have been very sensible; and his order that when it is proposed to supersede the seniormost man for a promotion post, he should be informed and given an opportunity to make a representation, may well be adopted, though I would say that the representation should be to the next higher authority and not the Managing Agent in every case. Shri Das Gupta also considered the question of promotion incidentally; though not covered by the terms of reference to him, he recommended that "all clerks who have been at the existing maximum of the combined grade Rs. 60 to Rs. 130 for two years may at once be given the promotion grade Rs. 120—5—160 provided they are not considered unfit and provided that the total number of such workmen do not exceed 25% of the total number of employees at the relevant time between the stages Rs. 90 to Rs. 130"; and that "in future those who have completed one year at the top of the revised scale, viz. at the stage of Rs. 134/- shall be given the promotion grade under similar conditions". The union in its written statement said that the Management had followed the recommendation for some time, and had thereafter stopped doing so. Union's witness No. 2, Kalipada Chattarjee, said in examination-in-chief that at present there was only one general assistant in the grade 120—5—160, and 7 or 8 clerks at the top of the grade 70—134 not promoted to the grade of general assistant; but in cross-examination, he admitted that there were more than one clerks in the grade 120—5—160; and Suprakash Mitra, witness No. 5, produced a chart Ext. 5 showing the existing strength of various cadres, and it shows 23 clerks in the grade 120—5—160, against 102 clerks in the lower grade. Hence the allegation that the Management has not been following the recommendation of

Shri Das Gupta is not borne out. The Management must continue to follow the recommendation of Shri Das Gupta on the point, and it should now be treated as a direction of the tribunal, as the question of promotion is among the terms of reference to this Tribunal. But there can be no direction as to automatic promotion to the next higher grade of those who are drawing the maximum of their grade for two years.

19. There are 18 posts of Section heads and 10 posts of Head clerks. As to promotion to the post of a Head clerk, the evidence is that when there is a vacancy, the General Manager constitutes a Selection Board of three officers, and the board invites applications and interviews all the applicants for promotion and makes its recommendation which is submitted to the General Manager and on his approval, the selected applicant is appointed by the relative Head of the Department. This system calls for no interference. As to promotion to the post of a Section head, this is done according to the evidence by the Head of the Department concerned, who makes his selection after considering the record and suitability for the post of the eligible clerks in order of seniority. In the matter of promotion, some discretion must be allowed to the Management, and I think therefore that this system should continue, subject only to this modification that if the senior most clerk eligible or several senior clerks are proposed to be superseded, they should be informed before the appointment is finally made, and given the opportunity to submit a representation to the next official superior i.e. the General Manager, within a reasonable time.

The Union has made a grievance of the fact that in the last 20 or 22 years, only three promotions were given to this officer's cadre from the clerical and supervisory cadres. About such promotion however, no direction can possibly be given; it must remain entirely at the discretion of the Management.

20. There remains the question as to the date from which the modified scales of pay and dearness allowance should come into force. The union has claimed that the revised scales of pay should have effect from the date when the Charter of demand was submitted to the Genl. Manager, viz. 28th July, 1965 and that the amended dearness allowance scheme should come into force from 14th August, 1962, i.e. one month after the date of publication of Shri Guha Roy's award. But Shri Guha Roy's award was affirmed by the Supreme Court on 16th March 1965, and the award remains in force for two months after the notice under Sec. 19(6) of the Industrial Disputes Act repudiating the award, Ex. 2, dated 19th July, 1965. At the earliest therefore, the Union could claim that this anomaly in the dearness allowance scheme be removed and the amended scheme brought into force from 19th September, 1965. I do not however think that I would be justified in doing so; the resources of the firm Light Railways will not bear a burden of a large arrear bill. Shri Acharyya has urged that both the revised scales of pay and the revised scales of dearness allowance should come into force from the date of reference, 1st September, 1966. In the normal course however, an award comes into force a month after its publication; this would be in the first part of April, 1967 as far as can be calculated. Since it would be convenient for budgeting and account if the new scales are brought into force from the new financial year 1967-68 and since pay for March 1967 would be drawn in April 1967 and would be included in the accounts of the financial year 1967-68, I direct that the award do come into force from the 1st March, 1967.

21. My award therefore is as follows:—

(1) The following revised scales should be adopted for the following categories:

Draftsman	Rs. 110—5—170
Ticket counter	Rs. 55—1—60—2—80
Literate Sorter & Daftari	Rs. 40—1—45—2—65
Ticket binder	Rs. 40—1—50
Peon	Rs. 35—1—40—2—50
Armed guard	Rs. 45—1—50—2—60
Darwan	Rs. 37—1—47
Waterman and Sweeper	Rs. 35—1—45.

It is to be noted that there is no post of Junior Draftsman at present. The other categories mentioned in the Paragraph 1 of the schedule do not need revision in

respect of basic pay. For being fitted into the new scale, each draftsman will receive an increase of Rs. 10 in his basic pay; incumbents of the post in the other categories listed above will have their basic pay refixed as if the new scales were always in force, provided they have not completed more than 5 years' service by 1st March 1967; those incumbents who have put in more than 5 years' service by 1st March 1967 will receive marginal adjustments in their basic pay, so that their basic pay is not lower than those in their category with shorter length of service. Dearness allowance and compensatory allowance will be calculated on the basic pay thus fixed.

(2) As regards dearness allowance payable to class III staff, the scheme of Shri Guha Roy is modified for persons drawing above Rs. 100/- by providing that for the first Rs. 100 they will draw dearness allowance at the scale prescribed by the Government for the first Rs. 100 of his pay, and for the balance of the pay above Rs. 100, the dearness allowance will be calculated on the basis of the living index of 471 to 480, with rise or fall of 5 percent for every 10 points rise or fall in the index, the total dearness allowance being 195 percent at the present cost of living index of 595; for the second 100 of his pay the class III staff will receive dearness allowance at Shri Das Gupta's scale, 35% at the cost of living index of 411 to 420 and 2½ percent rise or fall for each 10 points rise or fall of the index; this works out at 70 percent at the present cost of living index; for the balance of the pay above Rs. 200 class III staff will receive dearness allowance at ½ the rate applicable to the second 100 of his pay.

(3) Promotion—the basis for promotion should be seniority plus efficiency and suitability; and while the present system of selection by the departmental head for promotion to the post of Section head and on the recommendation of Selection Committee appointed by the General Manager for the post of Head Clerk should continue, in the case of promotion to the Section head if the next seniormost clerk is sought to be superseded, he should be given an opportunity of making a representation to the next higher authority within a reasonable time before the order for promotion is passed. Promotion to the grade Rs. 120—5—160, should continue to be made as recommended in Shri Das Gupta's award; but there will be no automatic promotion, to the next higher grade for those who are drawing the maximum of their grade for two years.

(4) The award will come into force from the 1st March, 1967.

Sd./- S. K. SEN,

Dated, 20th February, 1967.

Presiding Officer.

[No. 2/19/66-LR. IV.]

New Delhi, the 8th March 1967

S.O. 881.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the following award of the Industrial Tribunal, Calcutta in the industrial dispute between the Calcutta Port Commissioners, Calcutta and their workmen which was received by the Central Government on 28th February, 1967.

### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, CALCUTTA

REFERENCE No. 138 of 1966

#### PARTIES:

Employers in relation to the  
Commissioners for the Port of  
Calcutta,

and

Their workmen.

#### PRESENT:

Shri S. K. Sen, Presiding Officer.

#### APPEARANCES:

On behalf of employers.—Shri G. V. Karlekar.

On behalf of workmen.—Shri P. K. Ganguly.

STATE: West Bengal.

INDUSTRY: Port &amp; Dock.

## AWARD

By order No. 28/76/85/LRIV dated 10th September 1965, the Central Government referred for adjudication a dispute between the employers in relation to the Commissioners for the Port of Calcutta and their workmen represented by the National Union of Port Trust Employees in respect of the subject matter mentioned in the following schedule:

"Whether the practice of engaging Break-down gang unskilled labourers of the Second Tool Van as Coalmen, Oilmen and Unskilled labourers, when they are idle, should be continued? If not, what should be the remedy?"

2. For attending to the derailment on the Calcutta Port Commissioners railway system, the Commissioners maintain two tool vans each with a complement of one tindal in charge and 8 other men. Tool van No. 1 is mainly employed to attend to the work pertaining to derailment and its complement of 8 workmen apart from the tindal consists of 5 or 6 semi-skilled labourers known as B.D. gang khalasis and 2 or 3 unskilled labourers to make up the required number. Tool Van No. 1 has 3 shifts from 6 A.M. to 2 P.M. from 2 P.M. to 10 P.M. and from 10 P.M. to 6 A.M. and it has to be on duty for 7 days in a week. Accordingly, there are some B.D. gang khalasis kept as reserve. They are utilised in rotation to relieve the B.D. gang khalasis attached to tool van No. 1 so that each khalasi can get 1 day off in a week. Tool Van No. 2 is a sort of reserve and its complement consist of one tindal in charge and 8 unskilled labourers. It is on duty to attend to derailments of minor nature and the number of times that it is utilised in a year is much less than the number of times that tool van No. 1 has to go out to attend the derailment jobs. From the figures given in annexure A to the managements written statement it appears that tool van No. 2 was engaged in connection with derailment jobs only on 8 occasions in 1961 and on 14 occasions in 1962; and from Paragraph 3(ii) of the written statement itself it appears that tool van No. 2 was engaged in connection with derailment jobs on 24 occasions in 1963, 17 occasions in 1964 and 29 occasions in 1965 upto 31st October. As against that, the number of jobs assigned to tool van No. 1 was 523 in 1963, 688 in 1964 and 447 in 1965 upto 31st October. In the case of tool van No. 1 the number of jobs represents the work of 3 shifts, so that roughly each shift attends to 180 to 230 derailment jobs in a year. The number of jobs assigned to tool van No. 2 represents the work done in 2 shifts so that the number of job done by one shift varies from 4 to 15 in a year. It is clear therefore that the men attached to tool van No. 2 have very many off days, 300 or more in a year and they are utilised by being given other unskilled work like the work of a coal man (carrying coal to the tender of railway engine), oil man (transporting oil from the loco shed to where it is required) and other jobs of unskilled labour, e.g., cleaning the railway track of scattered coal and ashes.

3. It appears from the written statement of the management and the evidence of Shri E. O. Dias, Loco Foreman, that the grade of semi-skilled labour known as B.D. gang khalasi was created in 1955 and 24 posts of such khalasis were created. At that time in 1955, 4 khalasis were placed on the reserve and the remaining 20 were divided into 5 groups, i.e. 4 men to each of the 3 shifts of the tools van No. 1 and 2 shifts of tool van No. 2. Those semi-skilled workers who were khalasis allotted to tool van No. 2 had no job connected with derailment of railway bogies or wagons for many days in the year and they were assigned other jobs, but about 1961 they started objecting to being deputed to other work, particularly the work of an unskilled labourer. Accordingly, about 1961-62 the system was changed and the khalasis or semi-skilled B.D. gang men were placed only in tool van No. 1 and only unskilled labour was assigned to tool van No. 2. There is a common pool of unskilled labour under the loco foreman, who is under the Chief mechanical Engineer. The unskilled labour is given work of various kinds in rotation, e.g., as coalman, oilman, crane laskar. B.D. unskilled labour and so on, who all draw basic pay in the same grade Rs. 70-1-80-EB-1-85. But the unskilled labour assigned to tool van No. 2 also began objecting to deputation to do other kinds of unskilled work particularly the work of a coalman. As the objection could not be resolved by discussion between the union and the authorities or by the efforts of the Regional Labour Commissioner, Central, at conciliation, the dispute has been referred to the tribunal for adjudication.

4. Badsha Khan, the only witness examined on behalf of the Union, has stated that the unskilled workmen of the second tool van do not want to sit idle when



they are not required to attend to derailment jobs, and that they have no objection to being asked to work as oil men or to clean the tracks of coal and ashes, but they object only to being deputed to work as coalmen. The reason given by the witness is that the coal man's work is under a different section or authority. But from the evidence of Shri E. O. Dias, the loco foreman, it appears that the coal men as well as B.D. unskilled labour assigned to the tool van No. 2 and also the oilmen crane laskers are all under his control, and there are no different authorities or section heads in charge of the coal men and the B.D. unskilled labour. The real objection appears to be sentimental. It appears from the evidence of Shri Dias that when an unskilled labour is first recruited, he is to put work as a coalman, i.e., for loading coal in the engine tender; and then he works as a oil man and then as B.D. unskilled labourer and then when there is vacancy he is promoted as a loco cleaner who has a slightly higher grade pay going upto Rs. 89 (basic); and from a loco cleaner he becomes a B.D. gang khalasi which has a higher scale going upto Rs. 95 (basic), and from that one may get promotion to a fireman's job, which has a still higher grade of basic pay. As the unskilled labourer begins as a coalman it appears that when he has reached the stage of an unskilled B.D. gang labourer attached to tool van No. 2 he considers it beneath his dignity to carry coal to the engine tender, although the grade pay of the coalmen is the same. I cannot hold that the objection is reasonable. The coalmen, the oilmen, the crane-lasker and the other unskilled workmen all belong to the same pool of unskilled labour. Even though the B.D. unskilled labourer has been put in the way of acquiring a higher skill, he cannot justifiably object to do all other kinds of unskilled work including the work of a coal man when there is no derailment job for him to attend to.

5. Shri P. K. Ganguly appearing for the union was not willing to abide by the admission of his witness Badsha Khan, that the workmen of tool van No. 2 have no objection to being put to work as oil men or unskilled labourers to clean the tracks but have only objection to work as coal men. He contended that as Badsha Khan had obtained promotion as a fireman he was not in touch with the present sentiment of the unskilled workmen of tool van No. 2, and that they object to doing any other kind of unskilled work in their spare time and they want that the work of derailment should be divided between tool van No. 1 and tool van No. 2 as to keep them more or less fully engaged on their primary job of attending to derailment work. He has said that the workmen attached to tool van No. 1 are sometimes made to work overtime and for doing this they take away tool van No. 2 leaving the regular workers of tool van No. 2 in the loco shed where they are employed in other kinds of unskilled work; and that if the system is stopped and the regular workers of tool van No. 2 are deputed instead for the derailment jobs the workmen of tool van No. 2 would have more of their primary work of attending to derailment jobs and the Port Commissioners would also save the overtime pay now given to the workers attached to tool van No. 1. Shri Dias details the occasions on which the workers attached to tool van No. 1 are thus permitted to take tool van No. 2 leaving the regular workers attached to tool van No. 2 in the loco shed to do other kinds of unskilled work. One such occasion happens when tool van No. 1 is deputed in one shift to the northern section of the Port Commissioners Railways which is far away from the Port area. The tool van No. 1 in that case does not sometimes return in time either because it cannot finish the job within the regular shift hours or is on the way back to the loco shed. In such cases the loco foreman allows the workers of the next shift of tool van No. 1 to take tool van No. 2 leaving the regular workers of tool van No. 2 to do other kinds of unskilled work. This happens according to Shri Dias 10 or 15 times in a year. It cannot be said this is in any way unreasonable. In another circumstance also the workers of tool van No. 1 are allowed to take tool van No. 2. This is when the full complement of unskilled workers in tool van No. 2 does not report for duty on account of absenteeism or illness. Tool van No. 2 is not sent out without its full complement and workmen are not taken from elsewhere to make up the deficit when there is any. In such case, one shift of workers attached to tool van No. 1 is detailed to work overtime and they are permitted to take away tool van No. 2 leaving the regular workers attached to tool van No. 2 in the loco shed to do other kinds of unskilled work. This occurs according to Shri Dias 10 times in 6 months or about 20 times in a year. As regards a made up shift of the workers of tool van No. 1 taking out tool van No. 2 in the second set of circumstances, it appears to me that the regular workers of tool van No. 2 may have a legitimate cause of grievance. When there is a deficiency in the number of workers of tool van No. 1 in any shift, the deficit is made up by taking unskilled labourers attached to tool van No. 2. Similarly, when there is a case of minor derailment to which tool van No. 2 might be deputed but is not deputed because the full complement of workmen is absent on that day due

to absenteeism, it should be possible to make up the deficit by taking one or more unskilled labourers from elsewhere, e.g., from those working as coal men. If this were done, the unskilled workmen of tool van No. 2 would have more occasions on which they are employed on their primary job of attending to derailment work, i.e., about 20 days more in a year, and it would also instill into them the sense of equality so far as the dignity of labour is concerned between their work and the coalmen's work so that their objection to work as coalmen when they do not have the primary job of attending to derailment jobs might disappear.

6. As regards the contention of Shri Ganguly that the break down gang unskilled labourers of the second tool van have objection even to working as oilmen and as unskilled labourers engaged in cleaning the railway track, I cannot accept this contention because not only his own witness Badsha Khan does not make any such claim, but there is also the evidence of Shri Dias who says that the unskilled B.D. gang labourers object to being put to work as coalmen but they are not objecting to being put to other kinds of unskilled work. Thus, I must hold that the objection is only to deputation to work as coalmen in their spare time, and this objection, in my opinion, would be met by adopting the solution I have indicated.

7. I therefore find that the practice of engaging breakdown gang unskilled labourers of the second tool van as coalmen, oilmen and unskilled labourers doing other jobs when they are idle should be continued; but the practice of employing a set of workers attached to tool van No. 1 to do overtime by taking tool van No. 2 because the full complement of workers attached to tool van No. 2 is not present on the particular day should be discontinued, and when there is a minor derailment job which would normally be assigned to the second tool van if there were the full complement of workers on that day, the job should be assigned to the second tool van and the deficiency in the number of workers on that day should be made up by unskilled workmen from the common pool under loco foreman, particularly from the category of coalmen.

Dated, 24th February 1967.

Sd./- S. K. SEN,  
Presiding Officer.

[No. 28(76)/63-LR.IV.]

A. L. HANDA, Under Secy.

(Department of Labour and Employment)

New Delhi, the 7th March 1967

S.O. 882.—In exercise of the powers conferred by section 73F of the Employees' State Insurance Act, 1948 (34 of 1948); the Central Government, having regard to the location of the factories mentioned in the Schedule below in sparse areas in the State of Assam, hereby exempts them from the payment of the employers' special contribution leviable under chapter VA of the said Act until the enforcement of the provisions of Chapter V of that Act in these areas:—

SCHEDULE

Sl. No.	Name of the Distt.	Name of the area	Name of the Factory
1.	Lakhimpur	Village Bozaltob Mauza Pangagara	M/s. Jax Board.
2.	Cachar	Village Mcherpur Mauza Silchar	M/s. Union Flour Mills.
		Village Tarapur Mauza Silchar	M/s. Kiran Industries.
3.	N. C. & Mikir Hills	Village Langting Mauza Langting	M/s. Assam Frontier Vences & Saw Mills.
4.	Darrang	Town-Chariali Mauza, Chariali	State Elect. Supply.

**S.O. 883.**—Whereas the Central Government is satisfied that the employees of the Government Telegraph Stores, Bombay, belonging to the Government of India, Department of Posts and Telegraphs, are otherwise in receipt of benefits substantially similar to the benefits provided under the Employees' State Insurance Act, 1948 (34 of 1948).

Now, therefore, in exercise of the powers conferred by section 90 of the Employees' State Insurance Act, 1948 (34 of 1948), and in continuation of notification of the Government of India in the late Ministry of Labour and Employment No. 6/78/64-HI dated the 8th March, 1966, the Central Government hereby exempts the above-mentioned factory from all the provisions of the said Act for a further period upto and including the 14th January, 1968.

[No. F. 6/61/66-HI.]

*New Delhi, the 8th March 1967*

**S.O. 884.**—In exercise of the powers conferred by section 73F of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government, having regard to the location of the factory in an implemented area, exempts the Municipal Mechanical and Transport Workshop, Agra, from the payment of the employer's special contribution leviable under chapter VA of the Act for a further period of one year with effect from the 1st March, 1967.

[No. F. 6/12/65-HI.]

**S.O. 885.**—In exercise of the powers conferred by section 73F of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government, having regard to the location of the factories mentioned in the Schedule below in sparse areas in the State of Gujarat, hereby exempts the said factories from the payment of the employer's special contribution payable under chapter VA of the said Act until the enforcement of the provisions of Chapter V of the said Act in those areas:

#### SCHEDULE

Sl. No.	Name of the District	Name of the Area	Name of the Factory
1	2	3	4
1.	Baroda	Bhaili	i. M/s. Baroda Box Mfg. Co. ii. M/s. Baroda Board Mills. iii. M/s. Bharat Casement (P) Ltd. iv. M/s. Ideal Structure (P) Ltd.
2.	Amreli	Bagasara	M/s. S.T. Dept. Corporation.
3.	Broach	Ankleshwer Rajpipla	M/s. S.T. Ankleshwer. M/s. Saraswati Oil Mills.
4.	Jamnagar	Okha	M/s. Carborundum Universal Ltd.
5.	Junagadh	Shahpur	Press Treated Concrete Ltd.
6.	Kaira	Dhuvaran Ode Thasra Rania	M/s. Dhuvaran Thermal Power Station. M/s. Rambhai Khushalbhai Patel. M/s. Shah Industries. M/s. Dahyabhai Jivabhai.
7.	Kutch	New Kundla	M/s. Lalt Industries.
8.	Mehsana	Mehsana	Mehsana Dist. Co-operative Milk Product Unit Ltd.
9.	Rajkot	Derdi Dhoraji Vegdi	M/s. Derdi Oil Mills. A. Quality Pharmaceutical Works. M/s. Shah Pranlal Shival.
10.	Surat	Bardoli Chalthan Gangadhara Rander	India Star Diamond Factory. Shri Ramkabr Pipe Mfg. Co. M/s. Patel Paper Mills. M/s. The Olpad Group Co-operative Ground Nut Society Ltd.
11.	Bulsar	Parnera Umbaragam Dungari	Bharat Opticles Glass Ind. Ltd. M/s. Swastic Electrical Industries. Deshbandhu Paper & Board Mills.

1	2	3	4
12. Sabarkantha	Himmatnagar	M/s. Sabarkantha Ceramics.	
13. Panchmahal	Halol	I. M/s. Narayan Metal Quarry. II. M/s. Kamal Metal Quarry. III M/s. Janta Metal Quarry. IV. M/s. Adrash Metal Quarry.	
14. Surendranagar	Chuda Vagadia	M/s. Jayshree Industries. Shri Digvijay Tiles & Pottery Works.	

[No. F.6(14)/67HL.]

**S.O. 886.**—In exercise of the powers conferred by section 73F of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government, having regard to the location of the factories mentioned in the Schedule below in sparse areas in the State of Uttar Pradesh, hereby exempts the said factories from the payment of the employers' special contribution leviable under chapter VA of the said Act until the enforcement of the provisions of Chapter V of that Act in those areas:—

## SCHEDULE

Sl. No.	Name of the District	Name of the Area	Name of the Factory
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1	Etah	Kasganj	M/s. Bharat Metal Works.
2	Farrukhabad	Farrukhabad	M/s. India Wire & Allied Industries.
3	Ballia	Ballia	U.P. Govt. of Roadways Workshop.
4	Partapgarh	Bhadri	M/s. Nector Canned Food Private Ltd.
5	Meerut	Partapur	M/s. Gromore Tools Corporation.
6	Bulandshar	Khurja	M/s. National Surgicals.
		Chhapraula	M/s. Sahni Malvia Automobile Industries.

[No. F. 6(13)/67 HI.]

New Delhi, the 13th March 1967

**S.O. 887.**—In exercise of the powers conferred by sub-section (3) of section I of the Employees' State Insurance Act, 1948 (34 of 1948), the Central Government hereby appoints the 19th day of March, 1967, as the date on which the provisions of Chapter IV (except sections 44 and 45 which have already been brought into force) and Chapters V and VI [except sub-section (1) of section 78 and sections 77, 78, 79 and 81 which have already been brought into force] of the said Act shall come into force in the following areas in the State of Mysore, namely:—

I. Area within the limits of the town Municipality of T. Narasipur (Mysore District) and inclusive of the following areas in and around the Municipal limits of T. Narasipur, namely:—

Survey Nos. 22, 23, 24, 25 and 40 of T. Narasipur.

II. Area within the limits of the town Municipality of Kollegal (Mysore District) and inclusive of the following areas in and around the Municipal limits of Kollegal, namely:

Survey Nos. 876 AB, 877 AB, 833 A, 884/1, 884/2, 885 BIA, 885 BIC, 885 B2 and 739 of Kollegal.

[No. F. 13(3)/67-HI.]

DALJIT SINGH, Under Secy.

(Department of Labour and Employment)

New Delhi, the 8th March 1967

**S.O. 888.**—In exercise of the powers conferred by the fourth proviso to clause (h) of Sub-section (5) of Section 8 of the Personal Injuries (Compensation Insurance) Act, 1963 (37 of 1963), read with sub-clause (2) of clause 8 of the Personal

Injuries (Compensation Insurance) Scheme, 1965, the Central Government hereby directs that the amount of the advance premium payable in respect of the quarter ending June, 1967, shall—

- (i) in the case of a person having a policy in force on the 31st March, 1967 be 'Nil' and
- (ii) in the case of a person who is required to take out a policy of insurance for the first time on the basis of his having been an employer for the complete quarter ending the 31st March, 1967, be Five paise per one hundred rupees of the wages bill for the quarter ending the 31st March, 1967.

[No. 2/2/67.Spl.Fac.II.]

N. N. CHATTERJEE, Jt. Secy.

**(Department of Labour & Employment)**

*New Delhi, the 8th March 1967*

**S.O. 889.**—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal-cum-Labour Court (Central), Jabalpur in the industrial dispute between the employers in relation to the Rawanwara Colliery (Messrs Amalgamated Coalfields Limited) under the Managing Agency of Messrs Shaw Wallace and Company Limited, Parasia (Madhya Pradesh) and their workmen, which was received by the Central Government on the 3rd March, 1967.

**BEFORE THE INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT (CENTRAL)  
AT JABALPUR**

*(Camp at Allahabad)*

*Dated February 13, 1967*

**PRESENT:**

Shri G. C. Agarwala—Presiding Officer.

REFERENCE No. CIT/LC(27)/1966 (JABALPUR)

REFERENCE No. CGIT—(77)/1965 (BOMBAY)

In the matter of an industrial dispute between the employers in relation to the Rawanwara Colliery (Messrs Amalgamated Coalfields Limited) under the managing agency of M/s. Shaw Wallace and Company Limited, Parasia (Madhya Pradesh) and their workmen.

**APPEARANCES:**

*For the employers.*—S/Shri J. K. Chowdhry, Law Secretary, Central India Coalfields Mine Association, V. M. Thakraoney, Chief Personnel Officer and Ujagar Singh, Senior Labour Welfare Officer of the concern.

*For the workmen.*—1. Dr. Sila Parmanand, President, M.P. Rashtriya Koyla Khadan Mazdoor Sangh. 2. S/Shri V. N. Dutta, General Secretary and P. N. Pachaury.

**INDUSTRY:** Coal.

**DISTRICT:** Chindwara (M.P.)

**AWARD**

The following four matters of dispute, comprised under three issues, stated in the Schedule to the order of reference, were referred for adjudication to Central Government Industrial Tribunal, Bombay, by the Ministry of Labour and Employment, Government of India by means of Order No. 5/32 '65-LRII dated 15th December, 1965:

**SCHEDULE**

- (1) Whether the management of Rawanwara Colliery was justified in dismissing Sarvashri R. U. Siddiqui, Compensation Clerk and Jhanakial, Magline Chowkidar with effect from the 14th September, 1965 and 10th September, 1965 respectively? If not, to what relief are the workmen entitled?

- (2) Whether the management of Rawanwara Colliery was justified in issuing an order asking Shri Ramjan Beg to work as a dresser with effect from the 10th October, 1965? If not, to what relief is the workman entitled?
- (3) Whether the action of the management of Rawanwara Colliery in terminating the services of Shri Harish Chandra, a Road Supervisor, with effect from 11th October, 1965 was an act of victimisation? If so, to what relief is he entitled?

2. The parties filed their statements of claims before the Bombay Tribunal. The employers had also filed their rejoinder before the said Tribunal on 5th February 1966. No rejoinder was filed by the workmen during the entire period the proceedings remained pending before the said Tribunal from 27th December 1965 to 24th September 1966, whereafter the case was transferred to this Tribunal by Notification No. 8/141/66-LRII dated 17th September 1966.

3. When the case came up for first hearing on 24th October 1966 before this Tribunal, the workmen were given an opportunity to file a rejoinder which they did not do. Thereafter, the parties took three dates for compromise and when they failed to achieve the same the hearing commenced on 11th January 1967. After evidence of two witnesses, the management took an adjournment to enable another witness to be produced and the hearing was adjourned to 3rd February 1967. The management on this date examined their remaining one witness and the workmen examined four witnesses. After conclusion of the evidence arguments in the case were heard on 7th February 1967.

4. Facts relating to the matter of each dispute would conveniently be stated while dealing with the issues under reference.

5. *Issue No. 1.*—"Whether the management of Rawanwara Colliery was justified in dismissing Sarvashri R. U. Siddiqui, Compensation Clerk and Jhanaklal, Magzine Chowkidar with effect from the 14th September, 1965 and 10th September, 1965 respectively? If not, to what relief are the workmen entitled."

(i) This issue covers the question of two workmen, R. U. Siddiqui, Compensation Clerk and Jhanaklal, Magzine Chowkidar. Their services were terminated as a result of two separate enquiries and separate order of termination was recorded against each. The facts leading to the termination, however, arise out of a common transaction.

(ii) The management of the Rawanwara Colliery, M/s. Shaw Wallace and Co. Ltd. had been allowing one basket of coal per day for domestic use to every worker. When the new Manager, Sri Amal Roy (E.W. 2) took over in May, 1965 he thought that the issue of so much quantity of coal was rather excessive and therefore by an order dated 18th July, 1965 he directed that coal would not be issued for and on holidays and Sundays. The Union, M.P. Rashtriya Koyala Khadan Mazdoor Sangh (INTUC) took up the matter with the Manager and Sri Madhukar Das (W.W. 3) President, Sri Ramjan Beg, Vice President and Sri Riazuddin Siddiqui (W.W. 4) Secretary discussed the subject with the Manager. The Manager referred the question to the Head Office and a decision was being awaited. 14th August, 1965 was a *Bhujalia* holiday and 15th August was a National holiday. For these two consecutive holidays, by reason of the subsisting order of the Manager, workers were not entitled to coal on and for these days. The case of the management is that Jhanak Lal in the morning after his duty hours between 8-30 and 10-00 a.m. incited the workers, rather their women, folk, to forcibly take coal from the Coal-shed and further represented that the management had issued orders that coal would be given for holidays also. A few women first came to lift coal at about 8-30 a.m. Smt. Sukhdaiya, Bhullar and Rameshwar were chowkidars. Smt. Sukhdaiya explained to them that no such instructions had been issued by the Manager. They went away and again a good number of women came in groups and persisted in taking the coal forcibly saying that they had been told that they had been permitted and the Manager was personally issuing coal. After some time Jhanak Lal himself came and when Bhullar enquired from him, he stated that he had done the right thing and in accordance with the instructions of the Officers. Sri Siddiqui also came before or after sometime and incited or instigated the women to take away coal assuring them that he would look to the consequences. The matter was reported to the management initially through Smt. Sukhdaiya. A serious view of this was taken by the management resulting in the charge-sheeting of these two workmen, Sri Jhanak Lal and Sri Siddiqui. They both denied the version given by the management and completely disowned to have had any hand in the incitement. After

their explanations were found unsatisfactory, two different Enquiry Officers were appointed and separate enquiries were held. Both the Enquiry Officers found the workmen guilty of the misconduct with which they were charged and the management accepting the findings terminated their services. The cases of each may now be taken up separately.

*R. U. Siddiqui, Compensation Clerk.*—The charge-sheet against him was issued on 19th August, 1965. It is in following terms:—

"It is reported against you as under:—

Regarding the supply of domestic coal the undersigned had notified all concerned through notice on the notice board that the employees would take one basket full of domestic coal every day excepting Sundays and holidays.

On 14th August, 1965 which was a holiday on account of 'Bhujalia' you personally went round instigated and incited a number of persons to take coal forcibly although the Chowkidar on duty had requested all not to take coal.

The acts as above alleged to have been committed by you amount to items of major misdemeanour under clause 18(1)(a), (e) and (t) of the Standing orders.

Accordingly you are hereby required to show cause within 48 hours of the receipt hereof why you should not be dismissed from service or otherwise punished.

Should you fail to submit your explanation as required, the matter will be disposed of without any further reference to you."

He submitted reply on 31st August, 1965. In this reply he completely denied the indictment. The reply is rather pertinent.

Translated, it runs as follows:—

"In my knowledge on 14th August, 1965 no worker on the siding received injury etc. because it was a holiday of Bhujalia and therefore your compensation clerk was also on leave. On the basis of this no question arises on the part of the Compensation Clerk to have asked anybody to take coal. All this is known more than me to you and even then an attempt has been made for harassment....."

The above text of the reply would show that the workman's attitude in his reply beside being vague and off the point, reflected an insolent attitude. The management by an order dated 23rd August, 1965 intimated that the explanation was considered unsatisfactory and an enquiry was directed on 26th August, 1965 at 10 a. m. Sardar Ujagar Singh, Labour Welfare Officer was appointed the Enquiry Officer and he conducted the enquiry on the appointed date and time. He came in evidence as E.W. 1 and proved the enquiry papers (Ex. E. 1). Sri Madhukar Das, the President of the Union, assisted Sri Siddiqui in the enquiry. The record of the enquiry proceedings would show that for the management Smt. Sukhdaiya was the first witness examined. After a break of an hour at 2.30 p.m. with the consent of the workman, Sri Siddiqui, it was again resumed at about 3.30 p.m. and then statements of Remeswar and Bhullar Chowkidars were recorded. Ekadev Office Chowkidar and Joshi Hospital Superintendent were also examined as management witnesses. Workman concerned, Sri Siddiqui, was thereafter examined followed by two witnesses Ramjan Beg and Budhoo in his defence. The proceedings show that the workman cross-examined the witnesses of the management at length. The entire proceedings were concluded the same day. The substance of the evidence of management witnesses was that the workmen (women) in a lot had come to collect coal. Sri Siddiqui incited them to go and take coal and assured them that he would look to the consequences. This was at about 10.30 a.m. The women in spite of the exhortation of the Chowkidar took away coal in their baskets. The defence of Sri Siddiqui was that at about 8.30 a.m. that day he had come to Gram Panchayat Office. He was told by Jhanak Lal that Madhukar Das had gone to colliery office and he was also wanted there. In the way, he found Budhoo and near the gate he found Ramjanbeg. Budhoo went away on his bicycle but Ramjanbeg accompanied him to the colliery office where he found Madhukar Babu. He was informed by Madhukar Babu that Smt. Sukhdaiya had come to his office and stated that she had been told by the Labour Officer that if anybody came to take coal that may be permitted. After sometime they went away to Gram Panchayat Office. To support this version as stated above, he examined Ramjanbeg and Budhoo but not Madhukar Babu. On an

appraisement of the evidence tendered by both sides, the Enquiry Officer recorded his finding on 3rd September, 1965. In his report, he reproduced the version given by each witness, gave his reasons for accepting the version of the management and found the charge established for disobedience of orders of superior or insubordination acting in a manner subversive of discipline and disorderly behaviour for preaching and inciting violence. The management accepting the findings terminated his services.

The law on the limits of the powers of the Tribunal to interfere in the discretion of the management on termination of service of an employee after a bonafide and proper enquiry is well settled by a series of decisions of the Hon'ble Supreme Court. As a dictum it was laid down for the first time in *Indian Iron and Steel Company, Ltd., and another Vs. their workmen* reported in 1958(I) LLJ. p. 260 and may be reproduced:—

"Undoubtedly, the management of a concern has power to direct its own internal administration and discipline; but the power is not unlimited and when a dispute arises, industrial tribunals have been given the power to see whether the termination of service of a workman is justified and to give appropriate relief. In cases of dismissal on misconduct the tribunal does not however, act as a court of appeal and substitute its own judgment for that of the management. It will interfere—

- (i) when there is a want of good faith,
- (ii) when there is victimization or unfair labour practice,
- (iii) when the management has been guilty of a basic error or violation of a principle of natural justice, and
- (iv) when on the materials, the finding is completely baseless or perverse."

The above principle has been reiterated by the Hon'ble Court in a number of cases (*Alipura Tea State Vs. their workmen* 1959 (II) LLJ p. 245, *Doom Dooma Tea Co. Ltd. and Assam Chah Karmachari Sangha and another* 1960(II)LLJ p. 56; *Pure Drinks (P) Ltd. Vs. Kirath Singh* 1961(II) LLJ. p. 99; *Saran Motors (P) Ltd. Vs. Vishwanath I.F.L.R.* Vol. 9, p. 7(1964-II-LLJ. p. 139); *Titaghur Paper Mills Co. Ltd. vs. Ram Naresh Kumar*, 1961(I) LLJ. p. 511; *Bengal Bhatdee Coal Co. vs. Ram Prabesh Singh*, 1963(I) LLJ. 291 (24 F.L.R. 406); *Khaddah & Co. Ltd. vs. Its workman* 1963 (II) LLJ. 452).

With these well known principles which may entitle the Tribunal to interfere, it remains to be seen whether the enquiry was a bonafide enquiry or merely was a cloak to punish and victimise the workman as he was Secretary of the Union. There undoubtedly was an incident in the morning of 14th August, 1965, when some women workers or rather the wives of the workers forcibly took away coal in spite of the exhortation of the chowkidars. This has been stated by the chowkidars in their evidence before the Enquiry Office. The Manager, Sri Amal Roy (E.W. 2) stated that in spite of the Union officials including Sri Siddiqui meeting him he was satisfied that the modification made by his order not to permit coal for holidays was a reasonable order and he had referred it to higher authorities. The reference does not cover the question whether the order was or was not reasonable. The fact remains that there was a subsisting order of the management and in spite of that certain women took away coal. The management, therefore, was justified in framing the charge-sheet and if Sri Siddiqui had incited the workers the management cannot be charged with bad faith. The only question is whether the enquiry is or is not vitiated by infraction of any principles of natural justice. For this only a few points of no material consequences were urged. It is contended that the helper Madhukar Babu was not allowed to cross-examine the witnesses. The record shows that Sri Siddiqui himself had cross-examined witnesses at length. No specific request seems to have been made to the Enquiry Officer to allow Madhukar Babu, helper, to cross-examine witnesses instead of Sri Siddiqui. Although, Sri Madhukar Das (W.W. 3) no doubt stated that he was allowed to sit as an observer and was not permitted to speak to the Enquiry Officer, yet this appears to be unwarranted and no question was put to the Enquiry Officer in cross-examination about it. After all, Sri Madhukar Das (W.W. 3) remained throughout in the enquiry as an observer or helper and could assist Sri Siddiqui in putting material question in cross-examination which undoubtedly Sri Siddiqui himself did as is clear from the record. Sri Siddiqui admitted that he was not prevented from putting questions.

It was next stated that the Manager came during enquiry and this introduced an element of unfairness. The Manager, Sri Roy, stated that he casually went



for about 15 minutes at about 6-30 p.m. By that time most of the evidence had been over and specially on behalf of the management. Naturally there could be no question of his influencing witnesses by his presence. This contention, therefore, is of no avail.

When the enquiry has been properly conducted and conformed to the rules of natural justice, it is not open to the Tribunal to assess the weight of evidence and substitute its own judgment as a court of appeal in place of the judgment of the Enquiry Officer. There was the evidence of the chowkidars before the Enquiry Officer and he had ample justification to accept their evidence in preference to the alibi evidence of Sri Siddiqui. There is no element of perversity in the finding. A baseless or perverse finding is only that which is not supported by any evidence or is entirely opposed to the whole body of evidence adduced at the enquiry, and not otherwise. [vide *Hamdard Dawakhana Wafk v. Its workmen*, 1962 (II) LLJ p. 772; *Tata Oil Mills Co. Ltd. Vs. Its workmen* 1963 (II) LLJ p. 78; *Saran Motors (P) Ltd., New Delhi v. Vishwanath*, 1964 (2) LLJ p. 139 and *Digwadih Colliery v. Ram Ji*, 1964 (II) LLJ. 143]. That being so, it is not open to this Tribunal to assess the evidence produced before the Enquiry Officer in the absence of perversity in the finding. It may be mentioned that on behalf of the workmen evidence was introduced on the merits of the alleged misconduct and to support the plea of alibi of the workman. Such evidence to disprove the alleged misconduct cannot be considered at all and the contingency would have arisen only if the enquiry had been vitiated and the employers had tried to establish the misconduct by independent evidence before the Tribunal. It is, therefore, neither open nor necessary to refer to that evidence.

The next question to be considered is whether punishment inflicted on Sri Siddiqui can be treated as an act of victimisation. Victimisation connotes an idea that the workman has not been guilty of the offence and yet he has been punished or at any rate punished unconscionably and disproportionately for the offence charged. Merely because the workman happens to be an important office bearer of the Union will not grant him an immunity from punishment for the misconduct. The management is not bound to treat him differently and to award a lesser punishment [vide *Titaghar Paper Mills Co. Ltd. Vs. Ram Naresh Kumar*, reported in 1961 (I) LLJ. p. 511]. The offence with which the workman was charged clearly fell within the four corners of Clause (c) and (t) of the Standing Orders. Being an important office bearer of the Union, it was the duty of Sri Siddiqui to have seen that the workers and their women folk adhered and observed lawful orders of the management and instead of doing so he, on the other hand, incited them to use force in carrying away coal. The past record of Sri Siddiqui was not clean and he himself admitted in his evidence that he had been once warned by the management though along with the other clerks for certain lapse. Quantum of punishment is a management function and I am afraid it is not possible to interfere in the punishment just because a more lenient view could have been taken. That being so, the order of the management cannot be held to be unjustified.

*Sri Jhanak Lal, Magazine Chowkidar.*—The case of this workman stands on a different footing. He was charged on two grounds (1) for incitement and instigation and (2) for spreading false news that the manager had given permission to take coal. This instigation and dissemination of false news, is said to have been done by him at the Labour Colony. The alleged misconduct came to the knowledge of the management, not directly through the workers, rather their women, who had been instigated but on hearsay basis from Smt. Sukhdaiva who reported the fact to Sri Mahapatra, the Enquiry Officer. Further the evidence of Sri Mahapatra itself indicates that the enquiry is vitiated because of his inherent incapacity to be an Enquiry Officer. He is another Labour Welfare Officer and stated that in the morning of 14th August, 1965, he came to know of this information from Smt. Sukhdaiva. The Manager asked him to hold a preliminary enquiry. He held preliminary enquiry so far as he interrogated Smt. Sukhdaiva and as he was satisfied by the version of Smt. Sukhdaiva, he verbally informed the Manager. In answer to the question of the Tribunal, he however, had to admit that this preliminary enquiry was held by him on 16th August and he interrogated not only Smt. Sukhdaiva but all the three chowkidars and these were the witnesses produced by the management in the enquiry. The manager then framed a charge-sheet and later on appointed him the Enquiry Officer. Sri Mahapatra held domestic enquiry on 25th of August and submitted a finding (copy Ex. E. 2) on 27th August, 1965. It is pertinent to note that in the enquiry report of Sri Mahapatra (E.W. 3) there is absolutely no mention of his holding a preliminary enquiry which he held on 14th or 16th August, 1965 and the result whereof he communicated to the Manager. Obviously, the fact was being suppressed both by him and the management as neither in the charge-sheet is there

any mention of his preliminary enquiry nor the fact was stated in the enquiry report of Sri Mahapatra. Sri Mahapatra naturally having prejudged the issue could not bear to bring a free and impartial mind on the assessment of the evidence of the management. Managerial enquiry should not be held by a person who has had an occasion to develop a bias. Such a principle was clearly enunciated by the Hon'ble Supreme Court in Kalyani P.H. Vs. Air France, Calcutta, reported in 1963 (I) LLJ. 679; as also in Associated Cement Co. Ltd. Vs. their workmen, reported in 1962 (II) LLJ p. 396. The principle of bias is a well established proposition which affects the basic capacity of the Enquiry Officer and it cannot be called a fair and bonafide enquiry if the Enquiry Officer has already prejudged the issue. The whole enquiry is, therefore, vitiated.

Apart from this, it appears that there has been some confusion in the case of this workman. The charge-sheet served on him was under Clause 18(i)(a)(e)(t). The management in the office copy of charge-sheet changed the Cl. (a) into (c) (vide Ex. E. 14) and of which the workman has had no knowledge. His own charge-sheet (Ex. W/2) remained uncorrected. It is, therefore, unfair to have found him guilty of Clause (c) when he had been communicated of a misconduct under Clause (a). Presumably, the management themselves were not sure which of the two clauses were applicable. Clause (a) which was not taken into account by the management will have to be ignored. Clause (c) is not attracted, there having been no wilful insubordination and disobedience of any lawful or reasonable order. Clause (e) is obviously inapplicable, there having been no disorderly or indecent behaviour. Clause (t) also is not attracted as it was not the case of the management that he preached or incited violence. The Enquiry Officer in his enquiry report conveniently did not specify under which clauses of the relevant Standing Orders the charges were found proved. In the concluding paragraph he merely observed that the charges were fully proved, were of serious nature and would have resulted serious far reaching consequences and in violence. He further observed that the workman flouted the reasonable order of the management knowingly and instigated and incited workers by spreading false news. What are the relevant clauses of Standing Orders under which these acts found to have been proved could be covered as misconduct had not been stated by the Enquiry Officer. The whole enquiry is, therefore, vitiated.

When the enquiry stands vitiated, it was open to the management to have proved the alleged misconduct before the Tribunal [vide Phoolhari Tea Estate Vs. their workmen, reported in A.I.R. 1959 S.C. p. 1111 (1960-I-S.C.R. 32)]. The option, however, was with the employers to justify the misconduct before the Tribunal and it is not for the Tribunal to call upon the employers to produce the evidence after recording a finding whether the enquiry is vitiated or not [vide Khardah & Co. Ltd. v. its workmen, 1962 (II) LLJ p. 452; Punjab National Bank Vs. their workmen, A.I.R. 1960 S.C. 160]. They management in this case failed to exercise that option and remained contented by producing the Enquiry Officer, Sri Mahapatra, and relying on the result of the domestic enquiry. The domestic enquiry has been vitiated for the reasons stated above and there is no evidence on behalf of the management on the merits of the alleged misconduct. On the other hand, the workman concerned, Sri Jhanak Lal, came in evidence and denied that he incited the women folk at the colony or stated anything to the chowkidars. There was other corroborative evidence produced by him in the case which need not be referred as it is no duty of a workmen to disprove an alleged misconduct, when no evidence to prove the alleged misconduct was produced by the management. Dismissal of Jhanak Lal must, therefore, be held to be unjustified and he would be entitled to reinstatement with back wages.

6. Issue No. 2:—Whether the management of Rawanwara Colliery was justified in issuing an order asking Shri Ramjan Beg to work as a dresser with effect from the 10th October, 1963? If not, to what relief is the workman entitled?

Sri Ramjan Beg was a Dresser and as a Dresser his duties were under ground. He remained designated as a Dresser throughout and was paid as a Dresser. It appears that there was a meeting of Works Committee on 29th October, 1964, and in the minutes item No. 9 relates to the travelling road. In the works Committee meeting it was suggested that the travelling road should be cleaned and the manager allotted the supervision work to Sri Ramjan Beg. No extra remuneration was payable or in fact paid to Sri Ramjan Beg. This supervision work was discontinued by an order of the management dated 10th October, 1965 (Ex. E. 20) and this workman, Ramjan Beg, had been required to do the job of dresser without any further supervisory duty. It is difficult to understand how the workman concerned or the Union can have any grievance about it. The supervisory work which he was required to do in connection with the travelling road which is also under ground has necessarily to be an under ground job though sometimes

he may have to go on surface also. Sri Ramjan Beg has himself not come in evidence to state how he has been prejudiced by this order of the management. Merely because for sometime his job had been lightened and he was also required to do supervisory work on travelling road would not be tantamount to confer a claim on the workman to hold the supervisory job permanently. It was, as a matter of fact, a concession to him which has been withdrawn. There is thus no merit in this claim. The management was justified in issuing an order requiring him to work as a Dresser alone with effect from 10th October, 1965.

7. Issue No. 3.—“Whether the action of the management of Rawanwara Colliery in terminating the services of Shri Harish Chandra, A Road Supervisor with effect from 11th October, 1965 was an act of victimisation? If so, to what relief is he entitled?”.

A preliminary objection raised by the employers may first be disposed of before dealing with the case of the management on merits.

The employers filed an application on 30th January, 1967 raising a preliminary objection that as the employment of Sri Harish Chandra, workman concerned, was in connection with the work of road construction for public use, therefore, the Central Government was not the appropriate authority to make the reference and the reference consequently was bad in law. It has nowhere come in evidence that Sri Harish Chandra was road Supervisor of any public road. Nothing on the subject was stated by Sri Amal Roy, Manager. He simply attempted to show that the workman was a contractor and his job was to look after the maintenance of roads, bridges and culverts. He, however, admitted that he was a colliery contractor and such a job in other collieries is done through contractors. It follows, therefore, that according to the management itself this workman was doing supervisory job towards the maintenance of roads, culverts and bridges within the colliery premises. Anything done as an ancillary process in the premises of a mine will be covered within the definition of “mine” as defined in Sec. 2(j) of the Mines Act. That being so, the Central Government was the competent authority for the reference and the plea is clearly untenable.

Sri Harish Chandra is wife's brother of Sri Madhukar Das, President of the Union. It appears that he was engaged on a job of a temporary nature on daily basis so as to supervise the contractors job in the maintenance of roads, bridges and culverts. He was not on the roll of the company and was paid on bill book. Although Sri Amal Roy E.W. 3 described him as a contractor yet he admitted that he once suspended the workman and he was paid on daily basis. It is evident that he was a dallyrated worker and was paid weekly. Whether he has actually been found surplus or not is not a matter for determination in this enquiry. The issue is only limited to the question of victimisation. It is not the case of wrongful retrenchment. As a casual or temporary worker the management could terminate the services. Presumably as a gesture of goodwill, the previous manager, Sri Kumar, in order to oblige Sri Madhukar Das extended the dole to his brother-in-law and the present manager finding him surplus for the needs, decided not to continue with this extra burden. In so doing, the management cannot be attributed with any motive of victimisation. It is just removing an extra burden which had been imposed by the management upon themselves so as to find a job to the brother-in-law of the President of the Union. It may be mentioned that Sri Harish Chandra has himself not come in evidence to state how he has been victimised by this action of the management. The issue must therefore be answered in the negative.

*Decisions:—*

1. The result is that for Issue No. 1, it is held that the dismissal of Sri R. U. Siddiqui, Compensation Clerk, with effect from 14th September, 1965 was justified and he is not entitled to any relief.

2. The dismissal of Shri Jhanak Lal, Magzine Chowkidar, with effect from 10th September, 1965 was not justified. He is entitled to reinstatement with back wages. He shall be reinstated within one month from the date of the enforcement of this award and will get back wages.

3. For Issue No. 2, it is held that the management was justified in requiring Sri Ramjan Beg to work as Dresser by the order dated 10th October, 1965. He is not entitled to any relief.

4. For Issue No. 3, it is held that the termination of the services of Sri Harish Chandra, Road Supervisor, with effect from 11th October, 1965 was not an act of victimisation and he is also not entitled to any relief.

5. In view of the part success of both sides no direction is made for costs.

Sd./- G. C. AGARWALA,  
Presiding Officer.  
[No. 5/32/65-LRII.]

*New Delhi, the 9th March 1967*

**S.O. 890.**—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, No. 2 Calcutta, in the industrial dispute between the employers in relation to the New Jemehari Khas Colliery (Post Office J. K. Nagar, District Burdwan) and their workmen, which was received by the Central Government on the 6th March, 1967.

## CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, CALCUTTA

REFERENCE No. 35 of 1966

### PARTIES:

Employers in relation to the New Jemehari Khas Colliery,  
AND  
Their workmen

### PRESENT:

Shri S. K. Sen.—*Presiding Officer*

### APPEARANCES:

*On behalf of Employers.*—Shri B. K. Roy, Personnel Officer, New Jemehari Khas Colliery.

*On behalf of Workmen.*—Shri K. S. Roy, Vice President, Colliery Mazdoor Sabha.

STATE: West Bengal.

INDUSTRY: Coal Mines.

### AWARD

By Order No. 6/73/65-LRII dated 7th June, 1965, the Central Government referred for adjudication an industrial dispute between the employers in relation to the New Jemehari Khas Colliery, P.O. J. K. Nagar, Dist., Burdwan, and their workmen in respect of the subject matter mentioned in the following schedule:

"Whether the management of New Jemehari Khas Colliery (P.O. Jaykaynagar District Burdwan) was justified in stopping from work with effect from the 10th March, 1965, Shri Khandu Bouri, Onsetter/Banksman? If not, to what relief is the workman entitled?"

2. According to the case of the union, Khandu Bouri was employed as a Banksman at New Jemehari Khas Colliery for a long time, having worked at first in the old Pit 18-19 and having been then transferred to the New Pit 21-22 but on 10th March 1965 he was suddenly discharged by a verbal order.

3. According to the case of the management, Khandu Bouri had been employed as a Banksman only from 13th July 1964 at New Jemehari Khas Colliery. The old Pit 18-19 was closed in the month of August 1964. There was a strike in the colliery from 20th November 1964 and the strike was withdrawn at the intervention of the R.L. C(C) Calcutta by a negotiated settlement between the management and the union, Colliery Mazdoor Sabha and a memorandum of settlement dated the 8th December, 1964 was drawn up. One of the terms agreed was that the old workmen who were working in pit 18-19 would be employed in the new Pit 21-22 and that recently appointed workmen of the same category in the new Pit would be retrenched. In consequence of this agreement Ramkishan Mahato, Biseswar Thakur and Kashi Bouri who were old Banksmen at Pit No. 18-19 were given employment at the new Pit with effect from 9th March, 1965 in place of Sita Mahato, Joyram Ghosh and Khandu Bouri respectively and therefore Sita Mahato, Joyram Ghosh and Khandu Bouri as new workers were retrenched; no retrenchment notice was necessary as they did not complete one year's continuous service.

4. The union took the dispute to the Conciliation Officer, Central Raniganj. Before the Conciliation Officer the parties put their respective case and there was no settlement.

5. It is the common case of the two parties that there was a strike at New Jemehari Khas Colliery with effect from 20th November, 1964 and that at the intervention of the Regional Labour Commissioner, Central, Calcutta, it ended in an agreed settlement the terms of which were embodied in the memorandum of settlement dated 8th December, 1964 a copy of which is Ext. A in the present case. The very first term is that all the old workers would be given employment with effect from 9th December, 1964 and that the offer of absorption of the old workmen would remain open until 31st December 1964. In paragraph 3 it was provided that the management would follow the principle of "last come first go" in terminating the services of new workmen. Shri Bibhatsu Roy, examined by the management, explained the reason for the delay in absorbing the 3 banksmen from the old pit. He said that Pit No. 18 was flooded during the strike period and pumping had to be carried out and the banksmen were engaged on work in the old Pit until the beginning of March 1965. Sri Sunil Sen, Organising Secretary of the Union who deposed as witness No. 2 for the union admitted that Biseswar Thakur, Ramkishan Mahato and Kashi Bouri were working as banksmen at the new Pit and that they were previously employees of Pit 18-19. He however claimed that the length of service of Biseswar, Ramkishan and Kashi was less than that of Khandu Bouri, and it has therefore been argued that the management was wrong in discharging Khandu Bouri. It is, therefore, to be considered when Khandu Bouri first obtained employment in the colliery.

6. Bibhatsu Roy stated that Khandu Bouri was employed for the first time in 1964, and in support of his statement he produced B form register for 1965, marked Ext. B. Against Sl. No. 293 is the name of Khandu Bouri and the date of his employment is noted as 13th July, 1964. The correctness of this entry however has been challenged by the union, which has referred to the fact that no B form register of any earlier year has been produced by the management. Khandu Bouri examined as witness No. 1 for the union claimed that he had been working for many years and that he first worked in Pit 18-19 and then was transferred to Pit 21-22. He sought to corroborate his evidence by production of two appointment letters, Ext. 1 and Ext. 2. Ext. 1 which bears the dates 1st February 1951 and 1st February 1952 relates to the appointment of Khandu Bouri but the name of the colliery is given as Jemehari Khas Colliery and not New Jemehari Khas Colliery. In Ext. 2 which is dated 22nd January 1962 the name of the colliery is given as New Jemehari Khas Colliery and it appears, therefore, that Khandu Bouri was appointed as a banksmen under New Jemehari Khas Colliery with effect from 22nd January 1962. No note can be taken of the earlier appointment in the other colliery, namely Jemehari Khas.

7. On the footing that Khandu Bouri obtained employment at the New Jemehari Khas Colliery with effect from 22nd January 1962, it must be held that his retrenchment was properly made in terms of the memorandum of settlement, Ext. A, because Kashi Bouri, Biseswar Thakur and Ramkishan Mahato were older employees than Khandu Bouri. In Ext. B, the B form register, the names of these three banksmen occur in Sl. Nos. 336, 337 and 338 and the dates of their appointment are respectively noted as 1-10-51, 3-4-53 and 20-8-55. They were, therefore, all appointed before 1962. That being so, it cannot be said that the order of retrenchment of Khandu Bouri was bad.

8. But the reason given by the management for not giving any notice or retrenchment compensation cannot be accepted. It must be held that Khandu Bouri was in service from 22nd January 1962 and therefore he had completed more than 1 year's continuous service by 10th March, 1965 when he was retrenched and he therefore should have been given retrenchment notice or in lieu thereof notice pay as well as the compensation prescribed by Sec. 25F of the Industrial Disputes Act. There must therefore be an order for such payment.

9. Shri K. S. Roy for the union referred to the admission made by Bibhatsu Roy in cross examination that 3 or 4 months back Kashi Bouri being invalid had been permitted to retire and his son had been employed in his place; Shri Roy has urged that in any case Khandu Bouri was senior to Kashi Bouri's son and Khandu Bouri should have been preferred to Kashi Bouri's son. But Kashi Bouri's son was appointed in place of Kashi Bouri long after 10th March, 1965 and he was appointed at a time when the agreement, Ext. A, was no longer in force. Therefore, the argument that Khandu Bouri should have been taken in preference to Kashi Bouri's son has no force.

10. I find therefore that the management of New Jemehari Khas Colliery was justified in retrenching Shri Khandu Bouri, Banksmen from work with effect from 10th March 1965. But the management was wrong in not giving retrenchment notice or retrenchment compensation and I therefore direct that the management should pay to Shri Khandu Bouri one month's wages in lieu of notice

and 1½ month's wages as retrenchment compensation under Section 25F of the Industrial Disputes Act, within one month of the publication of this award.

Sd./- S. K. SEN,

Presiding Officer.

Dated the 2nd March, 1967.

[No. 6/73/65-LR.II.]

S.O. 891.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, No. 2 Calcutta, in the industrial dispute between the employes in relation to the New Jemehari Khas Colliery (Post Office Jaykaynagar, District Burdwan) and their workmen which was received by the Central Government on the 6th March, 1967.

### CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, CALCUTTA.

REFERENCE NO. 48 OF 1966

#### PARTIES:

Employers in relation to the New Jemehari Khas Colliery

AND

Their workmen

#### PRESENT:

Shri S. K. Sen.—*Presiding Officer.*

#### APPEARANCES:

*On behalf of Employers.*—Shri B. K. Roy, Personnel Officer.

*On behalf of Workmen.*—Shri K. S. Roy, Vice-President, Colliery Mazdoor Sabha.

STATE: West Bengal.

INDUSTRY: Coal Mines.

#### AWARD

By Order No. 6/72/65-LR.II dated 14th September, 1965 the Central Government referred for adjudication an industrial dispute between the employers in relation to the New Jemehari Khas Colliery, P.O. Jaykaynagar, Dist. Burdwan, and their workmen in respect of the matter specified in the following schedule:

"1. Whether the management of the New Jemehari Khas Colliery was justified in transferring their workmen, Sarvashri Bharat Upadhyaya, Motilal Gosai and Ramjit Tiwari, from the Colliery to Head office at Searsole Rajbari?

2. If not, to what relief are the workmen or any of them entitled?"

2. Previously, at New Jemehari Khas Colliery, Pit 16-19, sometimes referred as Pit No. 18, was being worked and the three workmen who are concerned in this reference case, namely, Bharat Upadhyaya, Motilal Gosai and Ramjit Tiwari, were in the service of the colliery as Chaprasis when Pit 18-19 was being worked. Bharat Upadhyaya was in service for 12 or 13 years; Motilal Gosai for about 13 years and Ramjit Tiwari for about 6 years. In 1961 sinking of a new pit which came to be known as Pit 21-22, began and the new pit began to be worked from 1962. Pit 18-19 had to be closed down in August 1964, due to inrush of hot water. There was then a confusion as the workmen who used to work in Pit 18-19 suddenly found themselves with no work. On 2nd October, 1964 there was an agreement in this respect between the management and the union namely the Colliery Mazdoor Sabha represented by the Vice-President, Sri K. S. Roy. It was agreed that all the workmen affected by the stoppage of work would be granted one month's leave without pay with immediate effect. It was also agreed that payment of lay-off compensation and other demands, would be decided by further negotiation. There was a strike by the workmen of pit 21-22 from 20th November, 1964. This was settled at the intervention of the Regional Labour Commissioner (Central), Calcutta by an agreement between the management and the union; and the terms of settlement were recorded on 8th December, 1964 in a memorandum of settlement of which a true copy is Ext. B. One of the terms was that the workmen both weekly and monthly who had come back after the expiry of their leave would be given employment with effect from 9th December, 1964; that the offer of absorption of the old workmen would remain open until

31st December, 1964; and that if necessary, workmen employed at the new pit i.e., pit 21-22 would be retrenched on the principle of "last come first go".

3. The Head office of New Jemehari Khas Colliery is at Searsole Rajbari which according to the witness for the management Shri Bibhatsu Roy is situated at a distance of 4 or 5 miles from the colliery and according to one of the workmen, Bharat Upadhyia who deposed as witness no. 2 for the workmen, at the distance of 9 or 10 miles. According to the management there was shortage of office peons at the Head office at Searsole and there were some surplus chaprasis sitting idle at Searsole colliery office due to suspension of work in pit 18. The manager of the New Jemehari Khas colliery was therefore asked to send at least 3 chaprasis of the colliery to the Head office for employment at the Head office with the assurance that at the Head office they would have all the privileges and facilities which they were enjoying at the colliery. This note was sent by the Secretary of the Board of Directors to the Manager of the colliery on 15th December, 1964 (Ext. C). The manager on 28th December, 1964 passed orders on the 3 chaprasis concerned in this case, namely, Bharat Upadhyia, Motilal Gosai and Ramjit Tiwari, transferring them to Searsole and asking them to report at that office on 30th December, 1964 giving them assurance that their service conditions would not be altered. These transfer orders are Ext. A, A1, and A2. The chaprasis however refused to obey the transfer order and complained to the Organising Secretary, Sunil Sen, of their Union, the Colliery Mazdoor Sabha, and Sunil Sen raised a dispute before the Conciliation Officer by a letter dated the 7th January, 1965. The union claimed before the Conciliation Officer, as it has claimed before the tribunal, that according to the agreement dated the 8th December, 1964 the old workmen of pit no. 18 were to be absorbed first in pit 21-22 and the management was to retrench newly appointed workers of the same category from pit 21-22 on the principle "last come first go"; and that there was no clause in the agreement relating to transfer to the Head office or to any other colliery; and conditions of service at the Head Office would be different from that at the colliery and accordingly the orders for transfer were bad and *mala fide*.

4. There was however no settlement before the Conciliation Officer and so the matter has come up before the tribunal.

5. The respective cases of the parties have already been set out above, and the point for decision is whether the orders of transfer to the Head Office at Searsole as passed by the management were justified. In the agreement dated 8th December, 1964, Ext. B, it was provided that all the old workmen both weekly and monthly who had come back to the colliery after the expiry of their leave would be given employment with effect from 9th December, 1964 and that the offer of absorption of old workmen would remain open until 31st December, 1964. Now, from the evidence of the 3 chaprasis, Motilal, Bharat and Ramjit, it appears that they never went on leave; but after the closure of Pit no. 18 in August 1964 they continued to be in service of the colliery and used to guard the godown where various items of machinery and stores were kept by the management. For non payment of wages from June 1964 upto December 1964 there was a claim filed by the Union before the Conciliation Officer (Central), Raniganj under paragraph 6 of the agreement of 8th December 1964, which provided that other dues, i.e. dues in respect of which there might be dispute, would be assessed by the Conciliation Officer (Central) Raniganj and payment would be made by the management according to his direction. Ext. 1 is the decision of the Conciliation Officer (Central), Raniganj dated the 15th May 1965, Ext. 2 being the reply which was submitted by the management on 11th May, 1965 to the claim of the union under various heads. From Ext. 2 it appears that management stated that Bharat Upadhyia had been paid for June and July 1964 and his wages from August to December 1964 were due, and in respect of Motilal Gosai and Ramjit Tiwari the management claimed that they had been paid their wages upto September 1964 and only wages from October to December 1964 were due. The decision of Conciliation Officer, Ext. 1, shows that the Conciliation Officer accepted the case of the management in this respect and awarded arrears of wages to these 3 chaprasis on that basis. These papers also show that these 3 chaprasis never went on leave for one month from 2nd October, 1964 in accordance with the first agreement between the management and the union after the closure of the old pit. Their case, therefore, does not come under paragraph 1 of the memorandum of settlement, Ext. B, which applies to the old workmen who had returned to the colliery on the expiry of the leave, i.e. on the expiry of the leave without pay for one month from 2nd October, 1964 or 3rd October, 1964. Accordingly, in respect of the transfer orders, Standing Orders will prevail. Paragraph 17 of the Standing Orders of New Jemehari Khas Colliery relates to transfer and provides that all workmen are liable to be transferred in exigencies of work

from one department to another or from one station to another or from one coal mine to another under the same ownership, provided that by reason of such transfer the wages and other conditions of service of the workmen are not altered to their disadvantage and provided further that reasonable notice is given of such transfer. Shri K. S. Roy for the union has urged that the Head Office at Searsole Rajbari was the Head Office not only of New Jemehari Khas Colliery but of two or 3 other concerns of the same owners, and that therefore transfer from the mines office to the Head Office was not proper. Shri Roy has referred to two decisions, namely 1962<sup>1</sup> LLJ 450 (Serajuddin & Co. Vs. their workmen) where it was held that a Head Office at Calcutta is not an integral part of the coal mines situated at Orissa, and 1965 II LLJ 302 (Khas Jeenagora Coal Company Vs. Salim Merchant) where it was held that the skeleton office at the bungalow of the Managing Director was not part of the mine. Both these cases however dealt with the question whether reference of the dispute to the tribunal should be made by the State Government where the Head Office is situated or by the Central Government which alone has jurisdiction to refer a dispute in relation to a mine to adjudication before a tribunal. These decisions, therefore, do not help us in the present case and we are left only with the terms of Paragraph 17 of the Standing Orders already referred to. The paragraph speaks not only of transfer from one coal mine to another under the same owner but also of transfer from one department to another and from one station to another. There is nothing in the wording of the paragraph to prevent a transfer from the colliery office situated near the colliery to the Head office in respect of the same colliery situated at a distance of 5 or 10 miles, even though some other offices may be situated at the same Head Office. The management gave evidence to show that other workmen have been transferred from the colliery office to the Head Office. Durga Prasad Padha, witness no. 2 for the management, stated that he himself was first working as a clerk at New Jemehari Khas Colliery office and had recently been transferred to the Head Office at Searsole Rajbari where he is dealing with Provident Fund accounts of the employees of the colliery. He also stated that one Ram Ashri Pandey, a chaprasi, had been transferred from the colliery office to the Head Office and that he is being paid everything by way of wages and allowances which he used to get at the colliery office. Exts. A, A1 and A2 show that in the transfer orders the three chaprasis were assured that their service conditions would not be altered in any way by their transfer to the Head Office. In the circumstances, I must hold that they were wrongly advised in disobeying the orders. Sri Roy has urged that no reason for the transfer was given in the transfer order. But paragraph 17 of the Standing Orders does not require that reason for transfer should be given in the transfer order. It is sufficient that the transfer should be needed in the exigencies of work. If there was no work for the chaprasis at the colliery office but there was need for peons at the Head office, it was natural for the management to transfer some of the chaprasis to the Head office. Each of these three workmen in their evidence stated that they saw the manager, Sri P. R. Bose, on receiving the order of transfer, and the manager told them that there was no work at the colliery and they had either to go home or to go to the Head-office as ordered. Thus the position was explained to them by the manager and if they still refused to obey the order, they were to be blamed and not the management.

6. I find, therefore, that the management of New Jemehari Khas Colliery was justified in passing orders of transfer on their workmen, Sarvashri Bharat Upadhya, Motilal Gosai and Ramjit Tiwari, from the colliery to the Head office at Searsole Rajbari and therefore the workmen are not entitled to any relief.

*Dated the 3rd March, 1967.*

Sd./- S. K. SEN,  
Presiding Officer.  
[No. 6/72/65-LRII.]

S.O. 892.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal No. 2 Calcutta, in the industrial dispute between the employers in relation to the Babisole Colliery, Post Office Andal, District Burdwan and their workmen, which was received by the Central Government on the 6th March, 1967.



## CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, CALCUTTA.

REFERENCE No. 116 OF 1966

## PARTIES:

Employers in relation to the Babisole Colliery

AND

Their workmen.

## PRESENT:

Shri S. K. Sen.—*Presiding Officer.*

## APPEARANCES:

*On behalf of Employers.*—Shri N. K. Mukherjee, Advocate.*On behalf of Workmen.*—Shri K. S. Roy, Vice-President, Shri Sunil Sen, Org., Secretary.

STATE: West Bengal.

INDUSTRY: Coal Mines.

## AWARD

By Order No. 9/19/66-LRIII dated the 17th August, 1966, the Central Government referred for adjudication a dispute between the employers in relation to the Babisole Colliery P.O. Andal, Dist. Burdwan, and their workmen in respect of the subject matter mentioned in the following schedule:

"Whether the management of Babisole Colliery was justified in declaring a lock-out from the 30th July, 1966, and if not, to what relief are the workmen entitled?"

By a separate Order of the same date the Central Govt. passed an order under Sec. 16(3) of the Industrial Disputes Act, 1947, prohibiting the continuance of the lockout.

2. On 24th August 1966, at the intervention of the Regional Labour Commissioner (Central), Calcutta, the parties entered into a settlement, and the terms thereof are embodied in a memorandum of settlement of the same date signed on behalf of the management by Shri S. R. Sinha, Manager, and on behalf of the Union by Shri Sunil Sen Organising Secretary. By the settlement the Colliery Mazdoor Sabha agreed to lift the Hunger strike by workmen immediately and the management of Babisole Colliery agreed to lift the suspension of work; and the management also agreed to give an ex-gratia payment of Rs. 15/- to each workman in view of the suspension of work by the employer and thereby the claim of the union for the period of suspension of work by the employers would be deemed to have been settled. The dates for payment of the monetary compensation and of the weekly wages due to the workmen immediately before the suspension of work were also settled and laid down in the memorandum of settlement. The parties expressed the hope that this settlement would pave the way for a harmonious employer-employee relationship.

3. In the circumstances, the dispute over the lockout and the relief if any due to the workmen is no longer in existence, and the parties agree that the tribunal will not sit to decide the question which has now become academic as to whether the management was justified in declaring the lockout from 30th July 1966. Accordingly, this award is made on the footing that no dispute on the subject matter mentioned in the reference order now exists. A copy of the memorandum of settlement between the parties dated 24th August, 1966 is annexed herewith.

Sd:/- S. K. SEN,  
Presiding Officer.

The 1st March, 1967.

*Memorandum of Settlement*

*Representing Workmen.*—Shri Sunil Sen, Organising Secretary, Colliery Mazdoor Sabha (AITUC) G. T. Road, Asansol.

*Representing Employer.*—Shri S. R. Sinha, Manager, Babisole Colliery, P. O. Andal, Burdwan.

*Short Recital of Dispute*

Apprehending trouble in the Colliery over certain matters, there was a suspension of work by the employer which were contested by the Union. The

R.L.C.(C), Calcutta intervened in the matter and advised the parties to settle the matter mutually. After prolong and long drawn discussions on various dates the parties to the dispute resolved the dispute on the following terms for developing good employer-employees relation:—

*Clause 1.*—The Colliery Mazdoor Sabha will lift the Hunger strike immediately and the management of Babisole Colliery will lift the suspension of work following the lifting of Hunger Strike.

*Clause 2.*—It is agreed between the parties that the workmen and the employees will be paid Rs. 15/- (Rupees fifteen) each as an ex-gratia payment on compassionate grounds. In view of this any claim by the Sabha for the period of suspension of work by the Employer will be deemed to have been settled and no further claim will be made for the above noted period. It is further agreed that all the period from the date of suspension of work by the Employer till the date of lifting of suspension of work will be treated as leave without pay and the workmen will be entitled all the benefits accruable to them as if there was no suspension of work by the employer.

*Clause 3.*—Monetary dues under clause 2 will be paid by the employer latest by 3rd September, 1966.

*Clause 4.*—The weekly wages due to the workers immediately before suspension of work will be paid latest by 29th August, 1966. Presuming that suspension of work will be lifted on or about 25th August, 1966.

*Clause 5.*—Immediately on lifting the suspension of work the worker should report to duty immediately but in cases where it is not possible to inform the workers in time by Sabha, the management agrees that any workmen or an employee who reports for duties within 10 days from the date of lifting the suspension of work will be allowed to resume duty. The management reserves the right to refuse the employment to any workmen or employee who reports for duties after the time mentioned above.

*Clause 6.*—It is expected that the above settlement between the parties will give the way for a harmonious employer-employee relationship and constitutional means will follow to remove any misunderstanding on either side. In this connection a reference may be made to the letter No. CAL-56/1/31/66, dated the 4th August, 1966 of the Regional Labour Commissioner (C), Calcutta.

for and on behalf of  
Colliery Mazdoor Sabha,  
Sd./-SUNIL SEN

for and on behalf of  
Babisole Colliery.  
Sd./- S. R. SINHA  
28-8-66

Organising Secretary,  
24th August, 1966.  
(Representing Workmen)

(Representing Employer)

SEAL

SEAL

Witnesses:

1. Sd./-  
24.8.66.  
Clerk of A.L.C.(C),  
Asansol.
2. Sd./-  
24.8.66.  
Babisole Colliery.  
P.O. Andol (Burdwan)

[No. 9/19/66-LRII-I.]

New Delhi, the 10th March 1967

**S.O. 893.**—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal, No. 2 Calcutta, in the industrial dispute between the employers in relation to the Ardhogram Khas Colliery, Post Office Ardhogram, District Bankura and their workmen, which was received by the Central Government on the 6th March, 1967.

## CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL No. 2, CALCUTTA

REFERENCE NO. 113 OF 1966

## PARTIES:

Employers in relation to the Ardhogram Khas Colliery,

AND

Their workmen.

## PRESENT:

Shri S. K. Sen—Presiding Officer.

## APPEARANCES:

*On behalf of Employers:* Shri S. N. Misshra with Shri D. P. Singh.*On behalf of Workmen:* Shri Parimal Das Gupta.

STATE: West Bengal.

INDUSTRY: Coal Mines.

## AWARD

By Order No. 1/4/66-LRII dated the 6th July, 1966 the Central Government referred for adjudication an industrial dispute between the employers in relation to the Ardhogram Khas Colliery, P.O. Ardhogram, Dist. Bankura and their workmen, in respect of the subject matter mentioned in the following Schedule:

"Whether the closure of Ardhogram Khas Colliery by the management from the 30th September 1965, was justified? If not, to what relief are the employees entitled?"

2. According to the case of the union, Ardhogram Khas colliery has still plenty of reserve left and can be worked for a number of years; but that the management in order to crush the union, served notice of closure with effect from 30th September, 1965 on 120 workmen, the notice being issued on 22nd September, 1965. The management did not pay any sum by way of retrenchment compensation or closure compensation or notice pay. When the matter was taken up before the Conciliation Officer by the union, the management claimed that the colliery was a seasonal one and all the workers were temporary and therefore no retrenchment compensation or closure compensation was payable. The union however denies that the colliery is a seasonal colliery and claims that the management should be asked to reopen the colliery and reinstate the 120 workmen and that in the alternative the management should be compelled to pay retrenchment or closure benefit to the workmen.

3. The management did not file any written statement but the case of the management was put by the Colliery-in-charge, Shri Durga Prasad Singh, who appeared and deposed at the hearing of the reference case. According to him, from 15th June to 30th September or 31st October each year the work at the colliery was stopped under the direction of the Mines department, and to his knowledge working of the mine was stopped for the aforesaid season in 1962, 1963 and 1964 and the workers were given about a week's notice before the closure on the 15th June of each year and when the colliery was reopened the old workmen if they presented themselves were reappointed the reappointment being treated as fresh appointment. In 1964 work in the incline commenced, according to D. P. Singh, on or about 20th November, 1964, and for a week or two before that a few workmen were employed to cut the coal at the mouth of the incline from what might be regarded as a quarry at the mouth of the incline. The management received permission of the Mines department to keep the colliery working during the rainy season of 1965, because owing to an explosion at the end of February or beginning of March, 1965, working of the colliery had to be stopped for a month or two under the order of the Mines Department and the management had to get gas proof equipment to keep the mine free from inflammable gases. But the management found that a great deal of loss had been incurred in working the mine during 1964-65 and therefore it was decided to close down the colliery with effect from 30th September, 1965, and on 22nd September 1965 notices were issued to the workmen informing them that the mine would be closed down, thus giving them about a week's notice. In the notice it was also stated that the workmen would be paid wages in lieu of notice and closure compensation under Sec. 25FFF of the Industrial Disputes Act if they were found entitled to the same under the provisions of the Act. According to Shri D. P. Singh, a few of the workmen discharged might be entitled to such a compensation but none had claimed such compensation from

the management direct. But shortly after the closure, the union had made a complaint to the Conciliation Officer and before the Conciliation Officer a claim was made on behalf of the Management that the workmen were temporary and that the colliery was a seasonal one and therefore no lay off compensation or closure compensation was payable.

4. The question posed in the reference order about the closure is "whether the closure by the management was justified?" On behalf of the union it has been urged that since there is still a good deal of reserve of coal at Ardhogram Khas colliery, the closure was not justified; and that on the other hand the management wanted to crush the union to employ workmen at a rate lower than that settled by the Colliery award and the decision of the Labour Appellate Tribunal. This contention however does not appear to be acceptable. Whenever the management starts working the Ardhogram Khas colliery again, the management would not be able to get away by paying a lower rate of wages, because there is the union which is now vigilant about the rates of the workmen and there are also the Labour Commissioner and Assistant Labour Commissioner, Central and Labour Inspectors, whose business is to ensure among other things that proper wages are paid to the workmen. The management spent a lot of money over the colliery when there was an explosion towards the end of February or beginning of March 1955. The management according to Shri D. P. Singh spent nearly Rs. 75,000/- in getting gas fighting equipment, though according to Shri Robin Chatterjee the cost of the equipment might be Rs. 25,000/- or Rs. 30,000/- and not Rs. 75,000/-. Moreover, when the colliery was started 10 or 12 years back, the management made a road 2 or 3 miles long from the colliery for transport of coal to the public highway and spent a considerable sum on the construction of the road. The management still has its office with a skeleton staff at the colliery. Also it is admitted that there is a good deal of the coal seam still unworked and unexhausted. It cannot be to the interest of the management, therefore, to close down the colliery arbitrarily. There appears to be substance, therefore, in the contention of D. P. Singh that the management were compelled to close down the colliery with effect from 30th September 1965 as the management found that the cost of working of the colliery was not being re-paid by the sale proceeds of the coal and for the 1964-65 season the management suffered a loss of about 2 lakhs of rupees. D. P. Singh said that the management has applied for supply of electricity by the Government from the Damador Valley and Durgapur grid, because the cost of diesel oil has gone up and it has become very costly to work a private generator for power required for working the haulage engine. There is also the question of diversion of the District Board Road which passes over the incline. D. P. Singh said that he had been writing to the authorities for diversion of the road but the authorities had not yet been doing anything about it. On behalf of the union it has been pointed out that in the closure notice, Ext. D, the financial difficulties and difficulties as to the diversion of District Board road have not been mentioned and that reference has been made to unavoidable reasons and circumstances beyond the management's control; and that if the main reason is financial difficulty that cannot be regarded as unavoidable reason or circumstances beyond the control of the management, *vide* the explanation to Sec. 25FFF of the Industrial Disputes Act. I must agree that where financial difficulty is the chief reason for closure, it cannot be said that the closure was made on account of unavoidable reason or circumstances beyond the control of the management. That however only affects the quantum of compensation and does not affect the question whether the management was justified in making the closure. In any case, the closure is *bonafide* because admittedly the mine is not being worked at present. According to the evidence there was only bringing up of coal which dropped from the roof of the incline for two months or so after the closure and for that only a few mazdoors were required.

5. In the circumstances, reinstatement with immediate effect cannot be ordered although there may be a direction that the workmen should be offered employment if they present themselves when the working of the colliery is resumed. There is the question of closure compensation. In this connection it has to be decided whether the workmen are temporary or they have completed at least 12 months' continuous service under the management. On behalf of the union it has been admitted that before 1965 the working of the incline had to be closed down from 15th June to 30th September or 31st October each year, but the witnesses examined for the union claimed that most of the underground workers were engaged in cutting coal from a quarry near the incline during the rainy season and that only a small portion of the workmen used to be discharged. That is the evidence of Shri Robin Chatterjee, Vice-President of the Colliery Mazdoor Sabha. The only workman examined Panchkari Bauri, also claimed that during the rainy season when working the incline was stopped he and other workmen always used to work in the quarry. This however has been strongly denied by Shri D. P. Singh on

behalf of the management. He stated that it was not true that in 1962, 1963 or 1964 when work at the colliery was stopped between 15th June and 30th September or 31st October under the direction of the Mines department, work in the quarry was going on. He stated that the colliery had no system for de-watering the quarries. In other words, it was not possible to have the quarries working during the rainy season. He said that the workmen were all discharged except the clerical staff at the colliery office, and that when work was started again the old workmen who presented themselves were reappointed, but this was treated as fresh appointment. D. P. Singh's evidence finds corroboration in an admission by the Union before the conciliation officer, *vide* letter No. COR-18(27)/66 dated 4th June 1966 from the Assistant Labour Commissioner Central, Raniganj to the Regional Labour Commissioner, Central, Calcutta, copy endorsed to the Secretary to the Government of India, Ministry of Labour and Employment, New Delhi, a copy of which forms the enclosure to the reference order. Therein the relevant portion is as follows, "Union stated that although the management gave notice to the workers every year regarding the closure of the mine from 15th June to 31st October, the workers were continued in employment on quarry mining which went on even during the rains as in the neighbouring colliery, i.e., New Ardhogram. In 1964 however the management did not continue these workers in the quarry but employed new workers at the quarry work. According to the union, there was no case for terminating their services as mine was to close only for the rainy season and these workers were supposed to continue after the mine reopened". Thus, in 1964 in any case, the workers in the incline were discharged and not given work during the rainy season. Ext. A is the form in which the notice of discharge was given in the beginning of June 1964. It says that as in previous years, this year too the work in the incline will remain closed during the rainy season, i.e. from 15th June 1964 to 31st October 1964 on account of danger of inundation, and due to exhaustion of quarry working, there would be no work at the quarry, and therefore the services of the workmen stand terminated with effect from 15th June 1964. It further appears from the Assistant Labour Commissioner's letter previously referred to that before the Conciliation Officer, the management produced a letter from the Labour Ministry stating that the colliery is a seasonal colliery, although before the tribunal no such letter from the Ministry of Labour has been produced. Without therefore finding that the colliery is a seasonal colliery, I must hold that the workmen did not continue in service between 15th June and 31st October, 1964. It is also admitted that no compensation was paid when the services of the workmen were terminated with effect from 15th June 1964. The management, therefore, was regarding the reappointment after the rainy season as fresh appointment. The question, therefore, is whether any of the workmen completed 12 months' continuous service in the colliery before the closure with effect from 30th September, 1965.

6. On behalf of the management it has been further urged that after the explosion in order to fit gas fighting equipment the mine had to be closed down for a month or two from 10th March 1965 and therefore there was a break of service even at that stage. At that stage also it appears that the management issued notices terminating the service of the workmen with effect from 10th March 1965, the notices being in the form of Ext. D proved by D. P. Singh. This break, however, should be treated as a period when workmen were laid off, because normally during that period the colliery should have been working, and the period for which the work would have to be suspended was uncertain. Under Section 25B of the Act which defines continuous service, it is provided that the number of days on which a workman has been laid off under the provisions of the Industrial Disputes Act or under any agreement shall be included in the number of days that the workman has worked. Accordingly the break from 10th March 1965 should not, in my opinion, be treated as break in service. The break during the rainy season of 1964 was however a break and it is to be considered whether the workmen were reappointed at least 12 months before the discharge on closure with effect from 30th September 1965.

7. According to the evidence of D. P. Singh work in the incline started about 20th November 1964 and before that for a week or two there was work done by some workmen at the mouth of the incline where there is something like a quarry and therefore it would appear that none of the coal miners worked for 12 months, that is none worked from 1st October 1964 to 30th September, 1965. Now the list of 120 workmen discharged with effect from 30th September 1965 includes also some clerks and some supervisory staff like overman and mining sirdar. Ext. B which is the form B register of employees of Ardhogram Khas colliery for 1965 shows that some of these employees in any case were appointed more than a year before 30th of September, 1965. Thus No. 1 of the list of retrenched workers

R. P. Chakravorty Overman, was appointed on 11th February 1962 and no termination of his service is noted in Ext. B. He must be taken to have served therefore continuously until 30th September 1965. No. 2, S. K. Layak, Mining Sirdar was appointed on 20th May 1960. He is noted as discharged on 10th March 1965 but the list filed by the union shows that he was retrenched from 1st October 1965. Accordingly, though it is not noted in Ext. B. he must have been reappointed when after the gas fighting equipment had been obtained the mine started working again. No. 3, G. C. Karmakar, is shown in Ext. B as appointed on 29th November 1962 and no date of discharge is noted, he must be taken to have worked continuously until 30th September 1965. No. 4, Bireswar Chakravorty is shown as appointed on 28th September 1964, there is no note as to the date of termination and he must be taken to have worked until 30th September 1965. No. 5, N. C. Chatterjee, Attendance clerk, is shown as appointed on 12th October 1963 and no date of discharge is noted; he must be taken to have worked until 30th September 1965. No. 6, Siboram Roy, Attendance clerk, is shown as appointed on 1st December 1964, he therefore did not complete one year before 30th September 1965. No. 7 U. C. Ghose, Surveyor is shown as appointed on 26th March 1962 but no note is made as to the date of termination of his service and he must be taken to have worked until 30th September 1965. No. 8, Bhabadev Roy is shown as appointed on 14th September 1964 and discharged on 10th March 1965 but reappointed on 10th April 1965. This break must be taken as a period of lay off and therefore he also must be taken to have completed one year. No. 9, B. S. Mishra, P.T. clerk, is shown as appointed on 1st January 1959 and no note of the date of termination is shown in Ext. B. He must be taken to have worked until 30th September 1965. In the case of No. 10, Provakor Goral the date of appointment is shown as 21st September 1964, he was discharged on 10th March 1965 and reappointed on 10th April 1965 and he must be taken to have completed one year before the closure. No. 11, Gora Bouri is shown as appointed on 28th November 1962 and discharged on 10th March 1965. As in the case of No. 2, S. K. Layak, he must be taken to have been reappointed after the gas fighting equipment had been set up and to have continued in service until 30th September 1965. No. 13 Dhiren Paul is shown as appointed on 28th September 1964 and discharged on 10th March 1965 and reappointed on 3rd May 1965. Taking the period from 10th March 1965 to 3rd May 1965 as period of lay off, he must be deemed to have been in service for more than one year. Similarly, No. 16, Gonga Bauri appointed on 19th September 1964 and reappointed after 10th March 1965 on 17th May 1965. No. 17, Durgapada Bauri appointed on 13th September 1964 and reappointed after 10th March 1965 on 3rd May 1965. No. 38, Nimal Majhi, appointed on 17th September 1964 and reappointed after the break from 10th March 1965; No. 41 Punu Bhandary, appointed on 7th September 1964 and reappointed after 10th March 1965 on 10th April 1965, must be taken to have completed one year's continuous service before the closure. In the case of the remaining workmen it does not appear that they completed one year's continuous service before the closure. They are, therefore, not entitled to any closure compensation under Sec. 25FFF of the Industrial Disputes Act. But the persons mentioned above except Sibram Roy, having completed one year's service or more are entitled to the closure compensation under Section 25FFF of the Industrial Disputes Act.

8. I therefore find that the closure of Ardhogram Khas Colliery by the management with effect from 30th September 1965 was justified or in any case *bonafide*. Out of the 120 workmen whose services were terminated with effect from 1st October 1965 according to the list proved by the union, the following workmen are entitled to compensation under Section 25FFF of the Industrial Disputes Act:—

Sl. No. in the list	Name	Compensation entitled
1. Shri R. P. Chakravorty		One month's wages in lieu of notice and 1½ month's wages as compensation.
2. Shri S. K. Layak.		One month's wages on account of notice and 2½ months' wages as compensation.
3. Shri G. C. Karmakar.		One month's wages in lieu of notice and 1½ month's wages as compensation.
4. Shri Bireswar Chakravorty.		One month's wages in lieu of notice and 15 days' wages as compensation.

Sl. No. in the list	Name	Compensation entitled
5. Shri N. C. Chatterjee.		One month's wages in lieu of notice and one month's wages as compensation.
7. Shri U. C. Ghose.		One month's wages in lieu of notice and 2 month's wages as compensation.
8. Shri Bhabadev Roy.		One month's wages in lieu of notice and 15 days' wages as compensation.
9. Shri B. S. Mishra.		One month's wages in lieu of notice and 3½ month's wages as compensation.
10. Shri Provakor Goral.		One month's wages in lieu of notice and 3½ month's wages as compensation.
11. Shri Gora Bouri.		One month's wages in lieu of notice and 1½ month's wages as compensation.
13. Shri Dhiren Paul.		One month's wages in lieu of notice and 15 days' wages as compensation.
16. Shri Gonga Bouri.		One month's wages in lieu of notice and 15 days' wages as compensation.
17. Shri Durgapoda Bhui.		One month's wages in lieu of notice and 15 days' wages as compensation.
38. Shri Nimai Majhi.		One month's wages in lieu of notice and 15 days' wages as compensation.
41. Shri Punu Bhandary.		One month's wages in lieu of notice and 15 days' wages as compensation.

The remaining workmen of the list do not appear to have worked for one continuous year before the closure and are not, therefore, entitled to compensation under Section 25FFF of the Industrial Disputes Act.

No order is made as to costs.

Sd./- S. K. SEN,

Dated: 2-3-1967.

Presiding Officer.

[No. 1/4/66-LRII.]

S.O. 894.—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal-cum-Labour Court (Central), Jabalpur, in the industrial dispute between the employers in relation to the Ramnagar Colliery, Post Office Ramnagar Colliery, District Shahdol (Madhya Pradesh) and their workmen, which was received by the Central Government on the 7th March, 1967.

#### BEFORE THE INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT (CENTRAL) AT JABALPUR

PRESENT:

Dated, March 3, 1967.

Sri G. C. Agarwala—Presiding Officer

REFERENCE No. CIT.LC(7)/66 (JABALPUR)

REFERENCE No. CGIT(28)/65 (BOMBAY)

In the matter of an Industrial Dispute Between the Employers in relation to the Ramnagar Colliery, Post Office Ramnagar Colliery, District Shahdol (M.P.)

#### APPEARANCES:

For the employers—S/Sri J. K. Chowdhry, Law Secretary, Central India Coal-fields Mining Association and D. P. Agarwal, Manager of the concern.

For the workmen—1. Sri K. B. Choughley, General Secretary, and Sri Shiv Mangal Singh, President, Koyla Khadan Shramik Sangh, Rajnagar Colliery and Bijuri Colliery, P.O. Rajnagar, Distt. Shahdol.

2. Sri T. K. Chand Kalia, President, Ramnagar Colliery Shramik Sangh.  
INDUSTRY—Coal. DISTRICT—Shahdol.

### AWARD

The following matters of dispute as stated in the Schedule to the order of reference were referred to the Bombay Central Industrial Tribunal for adjudication vide Notification No. 1/23/64-LRII, dated 1st April, 1965. The case was subsequently transferred to this Tribunal vide Government Order No. 8/141/66-LRII, dated 17th September, 1966:—

### SCHEDULE

- (i) Whether the workmen mentioned in Annexure I were stopped from work by the management or they left of their own accord? If they were stopped by the management, to what relief are they entitled?
- (ii) Whether the management's action in terminating the services of Shri Ram Brich s/o Shiv Bhol, Night Guard, with effect from the 16th June, 1964, and of Shri Shyam Narain s/o Lochan Ram, Office Peon, with effect from the 5th July, 1964, was justified? If not, to what relief are they entitled?
- (iii) What remuneration, if any, should be paid to the Miners employed in the Colliery for pushing empty tubs and from which date?
- (iv) Whether the workmen mentioned in Annexure II are entitled to be paid any compensation for stoppage of work in the Mine commencing from the 3rd August, 1964 and ending with the 8th August, 1964?
- (v) Whether Shri Ramdas and Shrimati Prem Bai, sweepers, were employed for the full day and all the seven days of the week although they were paid on part time basis? If so, to what relief are they entitled?
- (vi) Whether Shri Jhoolan, S/o Sakharam, Blacksmith, was made to work in the colliery for 6 days in a week although he was paid for five days only? If so, to what relief is he entitled?
- (vii) Whether the management of Ramnagar Colliery are justified in paying category V wages to the pick miners cum loaders employed in the colliery for cutting and loading a tub of 40.5 cft.? If not, to what relief are the workmen entitled and from which date?

### ANNEXURE I

Sl. No.	Name	Father's name
1	Jagdhari . . . . .	Budhsen
2	Meku . . . . .	Jhulagi
3	Chhanga Singh . . . . .	Shiv Lal
4	Rikhi Ram . . . . .	Ishvar Din
5	Net Ram . . . . .	Jawahir
6	Ram Sujan . . . . .	Bhagwani
7	Samaru . . . . .	Baldev
8	Gokul . . . . .	Baldev
9	Hira Lal . . . . .	Kunni
10	Mithai Lal . . . . .	Jagdhari
11	Raghuber . . . . .	Hari Lal
12	Chhengu Lal . . . . .	Munju
13	Amdeni Singh . . . . .	Bhuphsay
14	Sarvan . . . . .	Meghai
15	Visal . . . . .	Bhakla
16	Amol Singh . . . . .	Thakurdin
17	Nathu Ram Vishvkarma	
18	Dashmat w/o . . . . .	Hira Lal
19	Bahoran . . . . .	Itwari
20	Dalsay . . . . .	Jageser
21	Jai Singh . . . . .	Ahibaran
22	Angad . . . . .	Moti
23	Sukhi Lal . . . . .	Bisesar
24	Belu Devi . . . . .	Bechu
25	Piyare . . . . .	Baredi



Sl. No.	Name	Father's name
26	Kharidupahari . . . . .	Gauri
27	Babulal . . . . .	Budhsen
28	Kemla . . . . .	Bachu Lal
29	Maina . . . . .	Semlu
30	Charan . . . . .	Budhuwa
31	Kashi Ram . . . . .	Kodu
32	Sukh Ram . . . . .	Ishwar Din
33	Phirte . . . . .	Somen
34	Chhote Lal . . . . .	Bhagwani

## ANNEXURE II

1	Semlal	
2	Mahabir	
3	Ramdhari	
4	Bahorilal	
5	Meyalal	
6	Pancham	
7	Hichheram	
8	Malikram	
9	Hira	
10	Samelal	
11	Pancham	
12	Sukhlal	
13	Nathu	
14	Dev Narayan	
15	Sitaram	
16	Bir Sap	
17	Jaykaran	
18	Hira	
19	Chhotu	
20	Mayalal	
21	Babulal . . . . .	Jaykaran
22	Manbodh	
23	Budhsen	
24	Sakhan	
25	Ramkaran	
26	Jagbandhan	
27	Kanhai	
28	Phulvakra	
29	Babulal . . . . .	Narayan
30	Saghu	
31	Besahn	
32	Rajaram	
33	Ramsay	
34	Sagat	
35	Badbulal	
36	Bharat	
37	Brijlal	
38	Chanderdev	
39	Bhakoli	
40	Ramnath	
41	Ram Asre	
42	Ramu	
43	Thakur Prasad	
44	Ramratan	
45	Piyare	
46	Bhagwali	
47	Budhu	
48	Mukhlal	
49	Angad	
50	Bansh Gopal	
51	Rampal	
52	Budhsen	
53	Bansh Bahadur	

Sl. No.	Name	Father's name
54	Ram Say	
55	Nauhar Say	
56	Reku	
57	Jagatram	
58	Baiga	
59	Tamurha	
60	Khamaru	Charku
61	Nanku	
62	Govind	
63	Sukhdev	
64	Sukhsen	Mahangu
65	Somnath	
66	Ajmer	
67	Ramsunder	
68	Mahipal	
69	Ramcharan	
70	Birsay	
71	Jaykaran	
72	Phulelsinh	
73	Chhotelal	
74	Ramgarib	
75	Bhagwali	
76	Dayaram	Dholarh
77	Peshvaranjan	
78	Nandlal	
79	Chirya	
80	Jhukhan	
81	Bigni	
82	Mangli	
83	Dashmatiya	
84	Manohar	
85	Ramadhin	
86	Thela	
87	Rambisal	
88	Balram	
89	Shivmolan	
90	Sukhdev Anandi	
91	Johri	
92	Ramai	
93	Kallu	
94	Picharu	
95	Bulbu	
96	Bharosasin	
97	Anjitram	
98	Dhannuram	
99	Jethu	
100	Jolha	
101	Sanjivan	
102	Ranjitsinh	
103	Swamidin	
104	Sonlay	
105	Dhupsay	
106	Mangliya	
107	Narayan	
108	Mithu	
109	Besakhu	
110	Pahru	
111	Nanhu	

During the proceedings before the Bombay Tribunal besides the Koyla Khadan Shramik Sangh, Rajnagar Colliery and Bijuri Colliery which initiated the proceedings in the conciliation, another Union, Ram Nagar Colliery Shramik Sang, P.O. Ramnagar Colliery, applied to be made a party and filed their written statement. They even entered into a settlement with the management in respect of two workmen Ramdas and Smt. Prem Bai, sweepers, covered by item No. 5 of the issues under reference but in respect of which no order was recorded by

the Bombay Tribunal. It, however, sent a notice to the other Union, Koyla Khadan Shramik Sangh to show cause why the settlement be not accepted. After the case was transferred to this Tribunal and pleadings were perused on the first hearing which was 25th October, 1966, it transpired that rejoinders had not been filed by the employers and both the unions. After giving a few opportunities, rejoinders were ultimately filed and it was directed that a preliminary objection raised by the employers that Koyla Khadan Shramik Sangh, Rajnagar Colliery and Bijuri Colliery, was not competent to espouse the dispute would first be determined. For this purpose, a date was fixed which was 20th January, 1967. On this date an application was filed jointly by the employers and the Union, Koyla Khadan Shramik Sangh, Rajnagar Colliery and Bijuri Colliery for time for settlement of various disputes. The hearing was adjourned to 4th February, 1967, on which date a settlement, terms of which are reproduced in the annexure, was filed by the employers and the Union, Koyla Khadan Shramik Sangh, Rajnagar Colliery and Bijuri Colliery. Since the other Union, Ram Nagar Colliery Shramik Sangh, was not a party to the settlement and had been absenting from previous dates, it was considered necessary to issue a notice to this Union also to show cause why the settlement should not be accepted. They were given time to do so by 28th February, 1967, which they did not do. Obviously they were not interested in the dispute as they were absent on 20th January 1967, the date fixed for hearing of the preliminary objection and on the subsequent date which was 4th February, 1967. I, therefore, proceed to consider the various items of the dispute and the reasonableness of the terms of the settlement reached between the employers and the initiating Union, Koyla Khadan Shramik Sangh, Rajnagar Colliery and Bijuri Colliery.

**Findings:—**

**Issue No. 1.**—"Whether the workmen mentioned in Annexure I were stopped from work by the management or they left of their own accord? If they were stopped by the management, to what relief are they entitled?"

The first item relates to 34 workmen mentioned in annexure I. The settlement states that five of these namely, Angad (sl. No. 22), Sukhilal (sl. No. 23), Babulal (sl. No. 27), Sukhrum (sl. No. 32) and Kernla (sl. No. 28) were already in the employment of the colliery and there was no dispute. For the remaining 29 it was agreed that they would be paid Rs. 6000 to be distributed among these workers on the basis of a list to be submitted by the Union and in satisfaction of all the past claims. They have also been assured of preference in re-employment. The settlement is manifestly advantageous of the workers and is accepted.

**Issue No. 2.**—"Whether the management's action in terminating the services of Shri Ram Brich s/o Shiv Bhol, Night Guard, with effect from the 16th June, 1964, and of Shri Shyam Narain s/o Lochan Ram, Office Peon, with effect from the 5th July, 1964, was justified? If not, to what relief are they entitled?"

This covers the case of two workmen, Ram Brich and Shyam Narain. For Ram Brich the management agreed to reinstate him and pay him Rs. 500 within 15 days of the publication of the award. The Union did not press the case of Shyam Narain. The settlement, therefore, is a reasonable and proper settlement.

**Issue Nos. 3 and 7.**—(3) "What remuneration, if any, should be paid to the Miners employed in the Colliery for pushing empty tubs and from which date?"

(7) "Whether the management of Ramnagar Colliery are justified in paying category V wages to the pick miners-cum-loaders employed in the colliery for cutting and loading a tub of 40.5 cft.? If not, to what relief are the workmen entitled and from which date?"

These two items relate to remuneration of miners and by the settlement, the management agreed to pay Rs. 30,000/- to the miners for the past claim and an additional rate in future in accordance with the terms and conditions stated in the settlement. This is also a fair and just settlement.

**Issue No. 4.**—"Whether the workmen mentioned in Annexure II are entitled to be paid any compensation for stoppage of work in the Mine commencing from the 3rd August, 1964, and ending with the 8th August, 1964?"

The dispute under this issue was for five days stoppage of work in respect of as many as 111 workers mentioned in annexure II of the schedule under reference. The management agreed to treat the days as attendance for purposes of bonus in accordance with the settlement. This is a compromise on fair basis.

**Issue No. 5.**—"Whether Shri Ramdas and Shrimati Prem Bai, sweepers, were employed for the full day and all the seven days of the week although they were paid on part time basis? If so, to what relief are they entitled?"

For this issue, Ram Nagar Colliery Shramik Sangh had already entered into a settlement with the employers before the Bombay Tribunal. By virtue of that settlement Ramdas and Smt. Prem Bai would in future get eight hours work from 17th June, 1966, the date of settlement. By the terms of settlement reached now with Koyla Khadan Shramik Sangh Ramdas has been agreed to be paid Rs. 350/- and Smt. Prem Bai Rs. 400/- by the management till 9th February, 1967. This agreement is obviously to the distinct advantage to the two workmen and is accepted in preference to the settlement reached on 17th June, 1966 between Ram Nagar Colliery Shramik Sangh and the employers. It may be mentioned that the said settlement dated 17th June, 1966 had not been verified before the Tribunal and by no specific order the Bombay Tribunal had accepted and recorded an award in terms of that settlement. Consequently, for this item, issue No. 5, the settlement reached with Koyla Khadan Shramik Sangh, Rajnagar Colliery and Bijuri Colliery, is accepted.

**Issue No. 6.**—"Whether Shri Jhoolan, S/o Sakharam, Blacksmith, was made to work in the colliery for 6 days in a week although he was paid for five days only? If so, to what relief is he entitled?"

This issue covers the case of a single workman, Jhoolan, and it was agreed by the management that he would be paid Rs. 200/- in full satisfaction of his claim. The settlement is obviously advantageous to the workman and is accepted.

#### **Decision:**

The result is that the reference is decided in terms of settlement reached between the employers and the Koyla Khadan Shramik Sangh, Rajnagar Colliery and Bijuri Colliery, as reproduced in the annexure.

(Sd.) G. C. AGARWALA,

Presiding Officer.

Industrial Tribunal-cum-Labour Court (Central) at Jabalpur.  
3-3-1967.

#### **ANNEXURE**

#### **BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR**

In the matter of Reference No. 7 of 1966 (Jabalpur).

#### **BETWEEN:**

The Employers in relation to the Management of Ramnagar Colliery,  
P.O. Ramnagar Colliery, Distt. Shahdol, M.P.

AND

Their Workmen as represented by K.K. Shramik Sangh, Rajnagar and  
Bijuri Colliery.

#### **JOINT APPLICATION OF THE PARTIES NAMED ABOVE**

*May it please the Honourable Tribunal*

That in the interest of industrial peace and mutual goodwill the parties have mutually settled the dispute in the following terms and pray that the Honourable Tribunal may be pleased to accept the settlement and passed an award in terms thereof:—

#### **Terms of Settlement**

##### **Issue No. 1:**

Agreed that Shri Angad S/o Moti (Item No. 22), Shri Sukhilal S/o Bisesar (Item No. 23), Babulal S/o Budhusen (Item No. 27), Sukhram S/o Ishwardin (Item No. 32), Shri Kemla S/o Bachulal (Item No. 28), are in the employment of the Colliery and as such no dispute exists regarding them.

As regards the remaining 29 workers, as mentioned in the annexure 1 to the schedule of the order of reference it is agreed that they will be paid a sum of Rs. 6,000/- as lump sum to be distributed amongst all the 29 workers on the basis of the list to be submitted by the Union. This payment settles all their

past claims but for future employment they will have preference in employment for the job of miners in respect of 27 male workers and that of wagon loaders in respect of 2 female workers. In case of re-employment these workers will be issued 15 days notice by the management on their last known address or on address to be furnished by the Union in writing with a copy to the Union. If the workers fail to join within 15 days of the issue of the notice they will forfeit their right for employment.

The payment of Rs. 6,000/- shall be made within 7 days of the publication of the award.

#### **Issue No. 2:**

Agreed that Shri Rambrich S/o Shivbhol will be reinstated and shall be paid Rs. 500/- in final settlement of his claims for the intervening period of the employment. Shri Rambrich will be reinstated and paid the amount of compensation within 15 days of the publication of award. The case of Shri Shyam-narayan S/o Lochan Ram is not pressed by the Union hence dropped, but he will be paid a sum of Rs. 500/- (five hundred only) within 15 days of the publication of the Award.

#### **Issue No. 3 and 7:**

Agreed that the management shall pay a sum of Rs. 30,000/- to the miners employed in the Colliery. The amount of Rs. 30,000/- shall be divided by all the tubs loaded by miners other than quarry loaders for the period from 1st January, 1964 till the date of the publication of the award and a per tub rate will be worked out on this basis for payment to the individual miners employed during the said period viz. from 1st January, 1964 till the date of the publication of the award. From the date of the publication of the award the miners will be paid an additional consolidated allowance of 30 paise per tub of 40.5 cft. in satisfaction of the claim of the Union for empty tub pushing and tub rate and also lead and lift if any. The rates will be in force up to the date of the implementation of the coal wages board recommendations. The above payment shall be paid within 90 days of the publication of the award.

#### **Issue No. 4:**

The management agreed that 5 days of work stoppage between 3rd August, 1964 to 8th August 1964 shall be counted as attendance for the purpose of bonus only during the quarter ending September, 1964. Such of those miners who had worked on 3rd and 4th August, 1964, shall get benefit of 3 days only for the purpose of bonus. It may be noted that 6th was Thursday and hence regular rest day.

#### **Issue No. 5:**

Agreed that Shri Ramdas will be paid a sum of Rs. 350/- in full satisfaction of his claim from the date of the employment till 9th February, 1967.

Agreed that Smt. Prembai will be paid a sum of Rs. 400/- in full satisfaction of her claim from the date of the employment till 9th February, 1967.

The above payment shall be made within 15 days of the publication of the award. Further without prejudice of both the parties, it is hereby agreed that both the employees will be given 6 days work in a week and paid accordingly from 10th February, 1967.

Agreed that Shri Jhullan S/o Sakha Ram Blacksmith will be paid a sum of Rs. 200/- the full satisfaction of his claim, and now he is paid for the number of days he is working.

#### **For Workmen:**

Sd./- K. B. CHOUGALE,  
General Secretary,

KK.S. Sangh, Rajnagar & Bijuri Colliery,  
Jabalpur.

#### **For Employers:**

Sd./ D. P. AGARWAL,  
Manager,

Ramnagar Colliery.

*Verified*

*Dated, 4th February, 1967.*

Sd./- G. C. AGARWAL,  
Presiding Officer,  
Industrial Tribunal-cum-Labour Court (C), Jabalpur.  
[No. 1/23/64-LRII.]

*New Delhi, the 13th March 1967*

**S.O. 895.**—In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the following award of the Industrial Tribunal No. 2, Calcutta, in the industrial dispute between the employers in relation to the Parascole Colliery, Post Office Kajoragram, District Burdwan and their workmen, which was received by the Central Government on the 8th March, 1967.

**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, CALCUTTA**

**REFERENCE NO. 45 OF 1966**

**PARTIES:**

Employers in relation to the Parascole Colliery,

**AND**

Their workmen.

**PRESENT:**

Shri S. K. Sen—Presiding Officer.

**APPEARANCES:**

*On behalf of employers.*—Shri P. N. Chaturvedi, Chief Personnel Officer, Parascole Colliery.

*On behalf of Workmen.*—Shri Bankey Singh, Organising Secretary, Colliery Mazdoor Union.

**STATE:** West Bengal.

**INDUSTRY:** Coal Mines.

**AWARD**

By Order No. 6/42/65/LRII, dated 6th August 1965, the Central Government referred for adjudication an industrial dispute between the employers in relation to the Parascole Colliery, P.O. Kajoragram, Dist. Burdwan, and their workmen in relation to the subject matter mentioned in the following schedule:

“Whether the action of the management of Parascole Colliery in dismissing their workmen Shri Kartick Singh, Underground Trammer from service with effect from 12th December, 1964 was justified? If not, to what relief is the workman entitled?”

2. The workman concerned, Shri Kartick Singh, was an underground trammer at Parascole colliery and had according to his own evidence put in 6 or 7 years' service. 14th and 15th October 1964 were holidays on account of Durga Puja and Kartick Singh applied for and obtained leave for the next two days, 16th and 17th October, 1964, by filing an application in the prescribed form, Ext. B. In the form he noted the reason for the leave as 'Durga Puja' at his home, his home being Vill. Karangar in Mungher District. 18th October 1964 was a Sunday and therefore Kartick Singh was to rejoin on 19th October 1964. But he did not turn up on that day. For unauthorised absence the management served chargesheet on him on 10th December 1964 and dismissed him on 12th December 1964. On 4th February 1965 the Organising Secretary, Colliery Mazdoor Union, raised a dispute before the Conciliation Officer (Central), Raniganj and before the Conciliation Officer the workman was represented by Shri Bankey Singh, Organising Secretary of the Union and the management by Shri P. N. Singh, Labour Welfare Officer of Parascole Colliery. It appears from the failure report by the Conciliation Officer, Central, Raniganj, enclosed with the order of reference that before the Conciliation Officer the case of the management was that the workman Kartick Singh did not send any application for extension of leave and was absent until he reported at the colliery on 8th December 1964 and saw the Assistant Manager who asked him to see the manager; that the manager served chargesheet on Kartick Singh on 10th December 1964, and when the manager sent for the workman after receiving the reply to the chargesheet, the workman asked for his full and final payment, and accordingly vouchers were prepared for full and final payment and he was asked to take his payment from the colliery next day, but from the next day he did not turn up. The case of the union was that having gone on 4 days' leave Kartick Singh found that his wife was seriously ill and so he applied for extension of leave by registered post for further 10 days on and from 17th October 1964, and that he came back to the colliery on the expiry of the 10 days and saw the manager who asked him to see the Assistant Manager when the latter returned from leave, as the letter for extension of leave sent by Kartick Singh might be with the assistant manager; and that in that way the manager and the assistant manager avoided permitting Kartick Singh to rejoin his job until 10th December

1964 when a chargesheet was served on him for unauthorised absence; and that the dismissal was made by a verbal order without holding any enquiry; and that the order of dismissal was therefore bad and that the workman was entitled to reinstatement.

3. Before the tribunal also the parties have taken the same pleas as had been taken by them before the Conciliation Officer.

4. The management has referred to paragraph 10 clause (e) and (f) of the Standing Orders of Parascole colliery, which provide among things that if the workman after proceeding on leave desires an extension thereof, he shall apply to the manager who shall send a written reply either granting or refusing extension of leave to the workman; and if a workman remains absent beyond the period of leave originally granted or subsequently extended, he shall lose lien on his appointment unless he return within 10 days of his leave and explain to the satisfaction of the manager his inability to return on the expiry of his leave; and in case a workman loses his lien on his appointment, he shall be entitled to be kept on the badli list. Paragraph 18 clause (n) provides that continuous absence without permission and without satisfactory cause for more than 10 days amounts to misconduct, and under paragraph 18, for misconduct a workman may be suspended or fined or his increment may be stopped or dismissed if he is found guilty of misconduct after departmental enquiry. In the present case admittedly the workman did not report back for duty within 10 days of the expiry of the leave originally granted to him. He had taken leave for 16th and 17th October 1964 with permission to avail of 14th and 15th October and apparently also of Sunday the 18th October. He was therefore, due on 19th October 1964 in the morning and 10 days from due date for joining would expire on 28th October in the evening or 29th October in the morning. According to Kartick Singh's own evidence however he reported on the 30th October 1964 and not on 29th October 1964. In his evidence, Kartick Singh stated that he had worked on 2 Sundays previously, and that when going on leave he told the Assistant manager that he would avail of 18th and 19th October as rest days in lieu of the 2 Sundays on which he had worked, and therefore he was due to join on the 20th October. But this case was not made out either before the Conciliation Officer or in the written statement. In the written statement it was stated that he took leave for 4 days from 14th October to 17th October 1964, and as the condition of his wife remained bad, he applied for further 10 days' leave from 17th October 1964. To that extent, therefore, Kartick Singh has sought to alter his original stand. His case in the evidence is that on 20th October 1964, he sent an application for 10 days' extension of leave by registered post from Dumka. He further stated that although his home was in Munger, his wife was in Dumka and so he went to Dumka and not to his own village, and it was from Dumka that he sent the letter for extension of leave by registered post. In support of his claim that he sent such an application, he produced the postal receipt for a registered letter. Ext. 1, which shows the issue of the registered letter addressed to the Manager, Parascole colliery in October, 1964, but it appears that a small piece of paper on which the date would appear, before the letters 'OCT' in the postal seal has been carefully cut out; and so from the receipt itself it cannot be said on what date in October 1964 the registered letter was posted. This appears to have been because the workman was uncertain as to his case, namely whether to say that he had sent the letter for extension on the 17th or 19th or 20th. The Assistant Manager Sri Shibabrata Mitra deposed for the management and he stated that no letter by registered post for extension of leave was received and that Kartick Singh did not report to him on 30th October 1964 but on 8th December 1964 for the first time after he had gone on leave. According to Kartick Singh's evidence before the tribunal, on return from leave he saw the assistant manager, and the assistant manager asked him to see him again on the next day, and on the next day he told Kartick Singh that he would have to take order from the manager and that he would have to come on the next day, and on the following day he said that he had not been able to obtain the order of the manager and asked him to come again after 2/3 days; and that after 2/3 days when he saw the assistant manager, he told him that the manager was not in good temper and should be given time to cool down and in that way he was kept waiting for 2 or 3 weeks, and that on 10th December 1964 he was served with the chargesheet when he went to see the assistant manager. In the cross-examination, Kartick Singh developed his story further and said that one day when he went to see the assistant manager (apparently after the asstt. manager had already kept Kartick Singh waiting for about 3 weeks) the assistant manager told him that he was going on 20 days' leave and asked him to see the manager; that Kartick Singh therefore went to see the manager and he was taken by the Labour Welfare Officer to the manager, and that the manager asked the Labour

Welfare Officer whether he had any work to which Kartick Singh could be put and the Labour Welfare Officer said 'no', and then the manager asked Kartick Singh to go away and that 10 or 15 days after that he was served with chargesheet.

5. All this story was denied by the assistant manager, Shibarata Mitra whose case was that Kartick Singh saw him for the first time on 8th December 1964 that he told him that he had overstayed his leave and asked him to see the manager, and that the manager served him with the chargesheet. The assistant manager also proved a note by him addressed to the Labour Welfare Officer dated 26th November 1964 (Ext. E) wherein he stated that Kartick Singh, Underground trammer, was remaining absent from work from October before Puja and that the Labour Welfare Officer was to send a letter to his home address enquiring about his reason for the absence and informing that unless he reported before 30th November 1964 he would be seriously dealt with. The assistant manager could not say whether the Labour Welfare Officer actually issued such a warning letter to Kartick Singh. On the same note there is the order of the manager dated 8th December 1964 for the issue of chargesheet on the workman. This note corroborates the evidence of the assistant manager that Kartick Singh did not actually report after leave on 30th October 1964 or indeed until 8th December 1964. Moreover, Kartick Singh's case as to what happened when he was supposed to have returned on 30th October 1964 varies considerably from the case which was put before the Conciliation Officer; where it was said that Kartick Singh went to see the manager on the expiry of 10 days after the period of leave granted to him, and the manager asked him to wait for the return of the assistant manager who had gone on leave as the letter for extension of leave supposed to have been sent by the workmen might be with the assistant manager. In view of the various accounts given by Kartick Singh, I must reject his case and accept the case of the management that Kartick Singh did not report for duty until 8th December 1964.

6. Kartick Singh said that when he was verbally told of the dismissal order by the manager, he went back to Dumka and made an enquiry at the post office as to what had happened to the registered letter which he had sent and after a lot of correspondence he got a reply, Ext. 2, apparently stating that the registered letter was delivered to the addressee on 23rd October 1964. But it should be pointed out that in Ext. 2 the words "delivered" appears to have been cancelled in pencil and it is therefore not clear whether postal authorities really meant that the letter had been delivered to the addressee. Moreover, no witness was called from the post office to prove this letter. Ext. 2. Kartick Singh said that he sent an acknowledgement due form along with the registered letter but never received back that form. I must accept the evidence of the assistant manager that a letter of extension of leave was never received from Kartick Singh; and that he did not actually report for duty on 30th October 1964 but that he first appeared after going on leave, on 8th December 1964.

7. In the circumstances, the management was right in drawing up proceedings against him. Ext. A is the chargesheet containing also the explanation of the workman proceeded against and the order of the manager and the order of the agent approving of the order of dismissal. Shri Bankey Singh appearing on behalf of the Union has urged that the dismissal was bad because no notice of the date of enquiry was given and that no proceeding was recorded at the domestic enquiry. Now, according to the evidence of the assistant manager, after receiving the reply to the chargesheet from Kartick Singh, the manager sent for both Kartick Singh and the assistant manager, and before Kartick Singh he questioned the assistant manager asking him about the allegations which Kartick Singh had made against the assistant manager in his reply. In his reply, Kartick Singh had stated that his wife was seriously ill until 29th October 1964 and therefore he could not join duty in time but he sent a registered letter and that after 10 days he came back and met the assistant manager who told him that he did not receive any letter, and even after seeing the postal receipt the assistant manager said that the receipt was wrong, i.e. false, and told him not to inform the manager about it and therefore for sometime he did not inform the manager; and in the meantime he went to the post-master and enquired about his letter, and the post-master advised to see the manager and so he had come back and met the manager. It may be mentioned in passing that here again the case is somewhat different from the case made before the tribunal, because before the tribunal the evidence of Kartick Singh is that only after the dismissal he went back to Dumka and enquired at the post office.

8. The assistant manager says that the manager asked him about the allegations and he denied the truth thereof, and then before the assistant manager, the manager questioned Kartick Singh again and Kartick Singh said that he had nothing more to add to what he had said in his reply, and that if he was not given



work he might be given his 'hishab' or final dues. It is thereupon that the manager passed the order of dismissal, noting that the employee did not take his job seriously. Kartick Singh admitted that when he handed over the reply to the chargesheet to the manager, which was on 11th December 1964, the manager asked him to see him on the next day. He denied that on the next day the assistant manager was also present and that in his presence the manager questioned the asstt. manager about the allegations. But he admitted that the manager verbally informed him of his dismissal. There is no reason to reject the case of the management according to which on the next day i.e. on 12th December 1964 the manager sent for both Kartick Singh and the asstt. manager and held an enquiry orally without recording to the statements of the assistant manager and of Kartick Singh. Thus, though there was no written notice given of the date of the enquiry and no record was made of the evidence at the enquiry, it must be held that a departmental enquiry was held. In the circumstances, the order of dismissal must be held to be proper and legal.

9. I therefore find the action of the management of Parascole colliery in dismissing Shri Kartick Singh, Underground trammer, with effect from 12th December, 1964 was justified and therefore the workman is not entitled to any relief except to get his arrear dues which the management has always been willing to pay him.

Dated the 6th March, 1967.

(Sd.) S. K. SEN,  
Presiding Officer.  
[No. 6/42/65-LRII.]

### ORDER

New Delhi, the 13th March 1967

**S.O. 896.**—Whereas the Central Government is of opinion that an industrial dispute exists between the employers in relation to the Digwadih Colliery of Messrs Tata Iron and Steel Company, Limited, Post Office Jhargora (Dhanbad), and their workmen in respect of the matters specified in the Schedule hereto annexed;

And, whereas the Central Government considers it desirable to refer the said dispute for adjudication;

Now, therefore, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Industrial Tribunal, Dhanbad, constituted under section 7A of the said Act.

### SCHEDULE

- (a) Whether the dismissal of Shri Thakur Singh, Watchman, Watch and Ward Department, with effect from the 8th May, 1964, by the management of Digwadih Colliery, of Tata Iron and Steel Company Limited, Jamadoba, Dhanbad, was justified?
- (b) If not, what relief is he entitled?

[No. 2/191/66-LRII.]

BALWANT SINGH, Under Secy.

### (Department of Labour & Employment)

New Delhi, the 9th March 1967

**S.O. 897.**—The following draft of a scheme further to amend the Madras Un-registered Dock Workers (Regulation of Employment) Scheme, 1957, which the Central Government proposes to make in exercise of the powers conferred by sub-section (1) of section 4 of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), is published as required by the said sub-section for the information of all persons likely to be affected thereby; and notice is hereby given that the said draft will be taken into consideration on or after the 3rd April, 1967.

Any objections or suggestions which may be received from any person with respect to the said draft before the date so specified will be taken into consideration by the Central Government.

*Draft Scheme*

1. This Scheme may be called the Madras Unregistered Dock Workers (Regulation of Employment) Amendment Scheme, 1967.

2. In the Madras Unregistered Dock Workers (Regulation of Employment) Scheme, 1957, clause 11-A shall be omitted.

[No. 622/3/66-Fac.II.]

*New Delhi, the 10th March 1967*

**S.O. 898.**—In exercise of the powers conferred by sub-section (1) of Section 4 of the Dock Workers (Regulation of Employment) Act, 1948, (9 of 1948), the Central Government hereby makes the following Scheme further to amend the Dock Workers (Safety, Health and Welfare) Scheme, 1961, the same having been previously published as required by the said sub-section, namely:—

1. This Scheme may be called the Dock Workers (Safety, Health and Welfare) Amendment Scheme, 1967.

2. In the Dock Workers (Safety, Health and Welfare) Scheme, 1961, in subparagraph (7) of paragraph 43, for clause (b), the following clause shall be substituted namely:—

“(b) No rope or chain shall be used in suspending stages unless it is of suitable quality, adequate strength and free from patent defects”.

[No. 628/16/66-Fac.II.]

**S.O. 899.**—In exercise of the powers conferred by sub-section (1) of section 4 of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), the Central Government hereby makes the following Scheme further to amend the Bombay Dock Workers (Regulation of Employment) Scheme, 1956, the same having been previously published as required by the said sub-section, namely:—

1. This Scheme may be called the Bombay Dock Workers (Regulation of Employment) Amendment Scheme, 1967.

2. In the Bombay Dock Workers (Regulation of Employment) Scheme, 1956, in clause 32—

(i) after the words “shall be paid attendance allowance”, the words, “exclusive of dearness allowance,” shall be inserted;

(ii) in the first proviso, after the words, “attendance allowance” the words “exclusive of dearness allowance,” shall be inserted.

[No. 528/173/65/Fac.II.]

*New Delhi, the 13th March 1967*

**S.O. 900.**—In exercise of the powers conferred by sub-section (1) of section 4 of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), the Central Government hereby makes the following Scheme further to amend the Calcutta Dock Workers (Regulation of Employment) Scheme, 1956, the same having been previously published as required by the said sub-section, namely:—

1. This Scheme may be called the Calcutta Dock Workers (Regulation of Employment) Amendment Scheme, 1967.

2. In the Calcutta Dock Workers (Regulation of Employment) Scheme, 1956, in clause 32—

(i) after the words, “shall be paid attendance allowance”, the words, “exclusive of dearness allowance,” shall be inserted;

(ii) in the first proviso, after the words, “attendance allowance”, the words, “exclusive of dearness allowance,” shall be inserted.

[No. 528/173/65-Fac.II.]

**S.O. 901.**—In exercise of the powers conferred by sub-section (1) of section 4 of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), the Central Government hereby makes the following Scheme further to amend the Madras Dock Workers (Regulation of Employment) Scheme, 1956, the same having been previously published as required by the said sub-section, namely:—

1. This Scheme may be called the Madras Dock Workers (Regulation of Employment) Amendment Scheme, 1967.

2. In the Madras Dock Workers (Regulation of Employment) Scheme, 1956, in clause 32—

- (i) after the words, "shall be paid attendance allowance", the words, "exclusive of dearness allowance," shall be inserted;
- (ii) in the first proviso, after the words "attendance allowance", the words "exclusive of dearness allowance," shall be inserted.

[No. 528/173/65/Fac.II-3.]

**S.O. 902.**—In exercise of the powers conferred by sub-section (1) of section 4 of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), the Central Government hereby makes the following Scheme further to amend the Cochin Dock Workers (Regulation of Employment) Scheme, 1959, the same having been previously published as required by the said sub-section, namely:—

1. This Scheme may be called the Cochin Dock Workers (Regulation of Employment) Amendment Scheme, 1967.

2. In the Cochin Dock Workers (Regulation of Employment) Scheme, 1959, in clause 32—

- (i) after the words, "shall be paid attendance allowance," the words, "exclusive of dearness allowance," shall be inserted;
- (ii) in the first proviso, after the words "attendance allowance" the words "exclusive of dearness allowance," shall be inserted.

[No. 528/173/65/Fac.II-4.]

**S.O. 903.**—In exercise of the powers conferred by sub-section (1) of section 4 of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), the Central Government hereby makes the following Scheme further to amend the Vizagapatam Dock Workers (Regulation of Employment) Scheme, 1959, the same having been previously published as required by the said sub-section, namely:—

1. This Scheme may be called the Vizagapatam Dock Workers (Regulation of Employment) Amendment Scheme, 1967.

2. In the Vizagapatam Dock Workers (Regulation of Employment) Scheme, 1959, in clause 31—

- (i) after the words "shall be paid attendance allowance" the words, "exclusive of dearness allowance," shall be inserted;
- (ii) in the first proviso, after the words "attendance allowance", the words "exclusive of dearness allowance," shall be inserted.

[No. 528/173/65/Fac.II-5.]

**S.O. 904.**—In exercise of the powers conferred by sub-section (1) of section 4 of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), the Central Government hereby makes the following Scheme further to amend the Mormugao Dock Workers (Regulation of Employment) Scheme, 1965, the same having been previously published as required by the said sub-section, namely:—

1. This Scheme may be called the Mormugao Dock Workers (Regulation of Employment) Amendment Scheme, 1967.

2. In the Mormugao Dock Workers (Regulation of Employment) Scheme, 1965, in clause 33—

- (i) after the words, "shall be paid attendance allowance", the words, "exclusive of dearness allowance," shall be inserted;
- (ii) in the first proviso, after the words "attendance allowance" the words, "exclusive of dearness allowance," shall be inserted.

[No. 528/173/65/Fac.II-6.]

**S.O. 905.**—The following draft of a scheme further to amend the Cochin Dock Workers (Regulation of Employment) Scheme, 1959, which the Central Government proposes to make in exercise of the powers conferred by sub-section (1) of section 4 of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), is published as required by the said sub-section for the information of all persons likely to be affected thereby; and notice is hereby given that the said draft will be taken into consideration on or after the 31st March, 1967.

Any objections or suggestions which may be received from any person with respect to the said draft before the date so specified will be taken into consideration by the Central Government.

#### *Draft Scheme*

1. This Scheme may be called the Cochin Dock Workers (Regulation of Employment) Amendment Scheme, 1967.

2. In clause 39 of the Cochin Dock Workers (Regulation of Employment) Scheme, 1959, after sub-clause (2), the following sub-clause shall be inserted, namely:—

“(2A) The Chairman may delegate in writing his functions under the proviso to sub-clause (2) (a) (ii) to the Deputy Chairman, but such delegation shall not divest the Chairman of his powers.”

[No. 628/34/66-Fac.II.]

K. D. HAJELA, Under Secy.

### MINISTRY OF PETROLEUM AND CHEMICALS

*New Delhi, the 10th March 1967*

**S.O. 906.**—In pursuance of clause (a) of section 2 of the Petroleum Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962) and in partial modification of the Notification of the Government of India in the Ministry of Mines and Fuel S.O. No. 1896, dated the 29th June, 1963, the Central Government hereby authorises the authority mentioned in column (1) of the Schedule below to perform the functions of the competent authority under the said Act, within the limits of the State mentioned in the corresponding entry in column (3) of the said Schedule.

#### SCHEDULE

Authority (1)	Address (2)	Territorial Jurisdiction (3)
Assistant Liaison Officer	C/o Oil and Natural Gas Commission Gujarat Pipelines Project, Sayaji Ganj, Baroda.	Gujarat State

[No. 25/2/67-ONG.]

C. P. JACOB, Under Secy.

#### (Department of Chemicals)

*New Delhi, the 14th March 1967*

**S.O. 907.**—Whereas it appears to the Central Government that it is necessary in the public interest that for the transport of crude Petroleum (Naphta) from the Burma-Shell Refineries Ltd., at Mahul in Maharashtra State to National Organic Chemicals Industries Ltd., Bombay, situated at village Ghansoli, in Maharashtra State, pipeline should be laid by the National Organic Chemicals Industries Ltd., Bombay and that for the purpose of laying such pipeline it is necessary to acquire the Right of User in land described in the schedule annexed hereto.

(2) Now, therefore, in the exercise of the powers conferred by Sub-section (1) of section 3 of the Petroleum Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962) the Central Government hereby declares its intention to acquire the Right of the said user therein;

(3) Any person interested in the said land may within 21 days from the date of this Notification object to the laying of the pipelines under the land to the Special Land Acquisition Officer, Bombay, and Competent Authority at, 1/B-2, “Basant Park Co-operative Housing Society”, Ghatkopar Mahul Road, Chembur, Bombay-71. Every person making such an objection shall also state specifically whether he wishes to be heard in person or by legal practitioner.

## SCHEDULE

State—Maharashtra

District—Bombay Suburban

Taluka—Kurla

Village	Survey Number	Acre	Area required in		
			Gunthas	Sq. yd.	Sq. feet
Mulund . . . . .	37	..	7	41	8
Do. . . . .	38/1	..	13	..	..
Do. . . . .	38/2	..	13	..	..
Do. . . . .	38/3	..	13	..	..
Do. . . . .	40	..	19	101	..
Do. . . . .	41(A)	..	8	9	7
Do. . . . .	42	..	6	7	3
Do. . . . .	43	..	12	14	6
Do. . . . .	386	1	..	48	8

[No. 2/40/66-Ch.I.]

S. SUNDARARAJAN, Under Secy.

## MINISTRY OF EDUCATION

## ARCHAEOLOGY

New Delhi, the 3rd March 1967

**S.O. 908.**—Whereas by the notification of the Government of India in the Ministry of Education No. S.O. 2966, dated the 27th September, 1966, the Central Government gave notice of its intention to declare the area near or adjoining the protected monument specified in the Schedule attached hereto, to be a prohibited area for purposes of mining operation or construction or both;

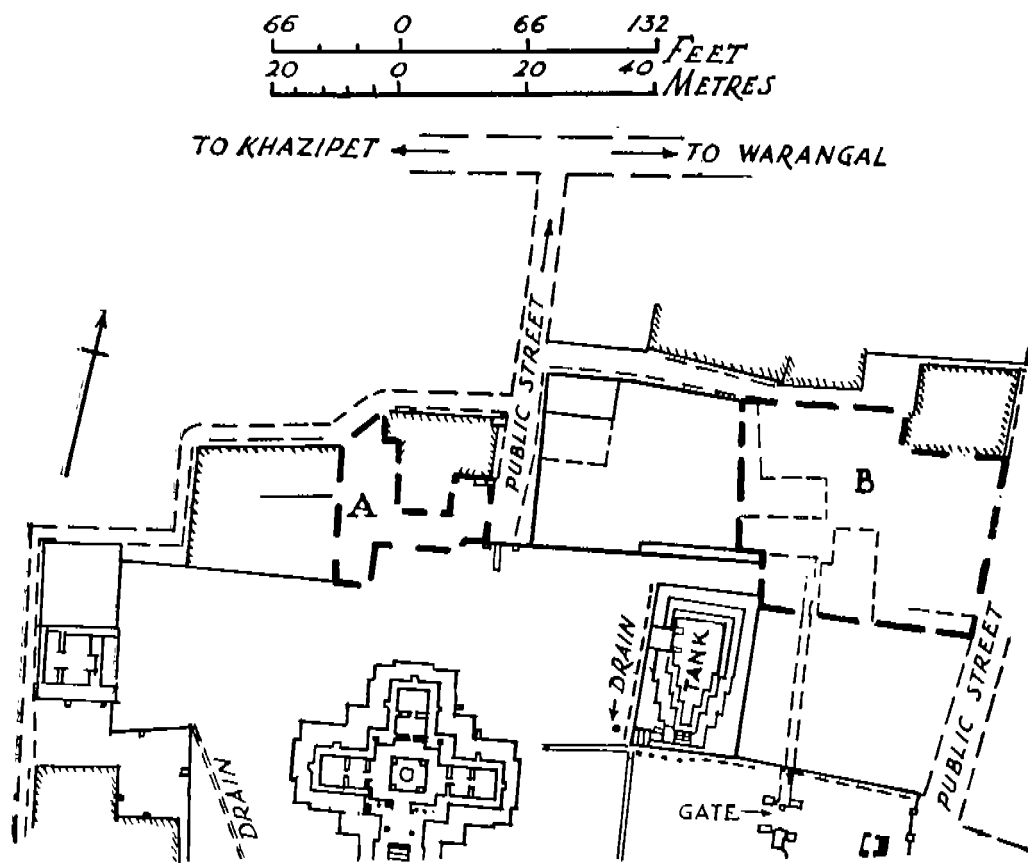
And, whereas, no objections have been received to the making of such declaration,

Now, therefore, in exercise of the powers conferred by rule 32 of the Ancient Monuments and Archaeological Sites and Remains Rules, 1959, the Central Government hereby declares the said area to be a prohibited area.

## THE SCHEDULE

Serial No.	State	District	Tehsil	Locality	Name of monument	Revenue plot numbers to be declared prohibited	Area	Ownership	Details of modern structure if any in the area to be detailed prohibited.	Remarks
1	2	3	4	5	6	7	8	9	10	11
1	Andhra Pradesh	Warangal	Warangal	Hanam-konda.	Thousand pillared Temple	The areas have been marked 'A' and 'B' on the plan reproduced below.	A : 1070 Sq. mt. B : 317.40 Sq. mt. <hr/> Total : 1387.40 Sq. mt.	Private	Two houses and a lavatory block are existing in areas marked A and B respectively.	..

# SITE PLAN OF THOUSAND-PILLARED TEMPLE AT HANUMAKONDA



LIMITS OF PROPOSED PROHIBITED AREA — —

[No. 4/25/66-CAI(I).]

SHARDA RAO (MRS.),  
Assistant Educational Adviser.

## MINISTRY OF INDUSTRY

(Indian Standards Institution)

New Delhi, the 28th February 1967

**S.O. 909.**—In licence No. CM/L-997, dated 25 January, 1965 held by The Omega Insulated Cable Co. (India) Ltd., Plot Nos. 16 and 17, Industrial Estate, Ambettur, Madras-58 having their office at 122/2 Mount Road, Madras-6, the details of which are published under S.O. 667 in the Gazette of India, Part II, Section 3, Sub-section 3(ii), dated 27 February 1966, the list of articles has been revised as under with effect from 1 December 1966:

Type	Voltage Grade	Conductor
<i>PVC Insulated Cables</i>		
(i) Single Core (unsheathed)	250/440 Volts	Aluminium only
(ii) Single core (unsheathed)	650/1 100 Volts	Copper or Aluminium
(iii) Single core (PVC sheathed)	250/440 Volts	Copper or Aluminium
(iv) Single core (PVC sheathed)	650/1 100 Volts	Aluminium only.

[No. MD/55:997.]

**S.O. 910.**—In licence No. CM/L-1131 dated 27 August 1965 held by M/s. Traco Cable Co. Ltd., Irimpanam, Thiruvankulam, Village Kanayannur Taluk, Ernakulam District, Kerala State, the details of which are published under S.O. 3300 in the Gazette of India, Part II, Section 3, Sub-section 3(ii) dated 5 November 1966, the list of articles has been revised as under with effect from 1 December 1966:

Type	Voltage Grade	Conductor
<i>(a) PCC Insulated Cables</i>		
(i) Single core (unsheathed)	250/440 Volts	Copper or Aluminium
(ii) Single core (PVC Sheathed)	650/1 100 Volts	Aluminium only
<i>(b) PVC Insulated Flexible Cords</i>		
(iii) Twin-twisted (unsheathed)	250/440 Volts	Copper only

[No. MD/55:997.]

**S.O. 911.**—In licence No. CM/L-1248 dated 22 April 1966 held by M/s. J. K. Steel Limited, Rishra, Distt Hooghly (West Bengal) having their office at 18, Rabindra Sarani, Calcutta-1, the details of which are published under S.O. 1551 in the Gazette of India, Part II, Section 3, Sub-section 3(ii) dated 28th May 1966, the following article has been added with effect from 1 December 1966:

Article/Process	Indian Standard
Steel wire ropes for general engineering purposes	IS:2266-1963 Specification of steel wire ropes for general engineering purposes.

[No. MD/55:997.]



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*New Delhi, the 1st March 1967*

**S.O. 912.**—In pursuance of Sub-regulation (4) of regulation 14 of the Indian Standards Institution (Certification Marks) Regulations, 1955, as amended from time to time, the Indian Standards Institution hereby notifies that the licence No. CM/L-4, particulars of which are given below has been cancelled with effect from 1 February 1967:

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License No. and date	Name and address of the Licensee	Article/Process Covered by the licence cancelled	Relevant Indian Standard
CM/L-4 -12-1955	The Indian Cable Com- pany Ltd., 9 Hare Street, Calcutta.	Hard-Drawn Copper Solid and Stranded Circular conductors of various sizes.	IS:282-1963

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[No. MD/55:4.]

A. N. GHOSH,  
Director General.

## (INDIAN STANDARDS INSTITUTION)

New Delhi, the 7th March, 1967

**S.O. 913.**—In pursuance of sub-regulations (2) and (3) of regulation 3 of the Indian Standards Institution (Certification Marks) Regulations, 1955, the Indian Standards Institution hereby notifies that the Indian Standard (s), particulars of which are given in the Schedule hereto annexed, have been established during the period 1 to 28 February 1967.

## THE SCHEDULE

Serial No. and Title of the Indian Standard Established	No. and Title of the Indian Standard or Standards, if any, superseded by the new Indian Standard	Brief Particulars
(1)	(2)	(4)
1 IS : 193-1966 Specification for soft solder ( <i>second revision</i> )	IS : 193-1956 Specification for soft solder ( <i>revised</i> )	This standard covers the requirements for 19 grades of soft solder. (Price Rs. 1.50).
2 IS : 283-1966 Specification for porcelain insulators for telegraph and telephone lines ( <i>second revision</i> )	IS : 283-1959 Specification for porcelain insulators for telegraph and telephone lines ( <i>revised</i> )	This specification applies to the pin type porcelain insulators intended for use in supporting telegraph and telephone lines. (Price Rs. 4.00)
3 IS : 496-1966 Specification for internal combustion engine lubricating oils ( <i>revised</i> )	IS : 496-1955 Specification for internal combustion engine lubricating oils.	This standard prescribes the equipments and the methods of sampling and test for the following classes of internal combustion engine lubricating oils suitable compression ignition and spark ignition engines (except aero-engines) under all climatic conditions in India : (a) Regular, (c) Heavy duty and (b) Premium, (d) Extra heavy duty. (Price Rs. 4.50)
4 IS : 687-1966 Method for determination of colour fastness of textile materials to washing : test 1 ( <i>first revision</i> )	IS : 687-1956 Method for determination of colour fastness of textile materials to hand washing	This standard prescribes a method for determination of colour fastness of textile materials irrespective of their composition (cotton, silk, man-made fibres, etc.) and form (fibre, yarn or fabric) to the action of soap solution at 40°C (Price Re 1.00)
5 IS : 715-1966 Specification for coated abrasives, glue bond ( <i>second revision</i> )	IS : 715-1962 Specification for coated abrasive, glue bond ( <i>revised</i> )	This standard covers the requirements for coated abrasives in the form of sheets, rolls, belts, disc and converted shapes with paper, cloth or combination backing. (Price Rs. 3.50)

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| 6  | IS : 738-1966 Specification for wrought aluminium and aluminium alloys, drawn tube (for general engineering purposes) ( <i>revised</i> ) | IS : 738-1956 Specification for wrought aluminium and aluminium alloys, tube (for general engineering purposes)           | This standard covers requirements of drawn tubes made from three grades of aluminium and from nine aluminium alloys in various conditions. (Price Rs. 5.50)   |
| 7  | IS : 739-1966 Specification for wrought aluminium and aluminium alloys, wire (for general engineering purposes) ( <i>revised</i> )       | IS : 739-1956 Specification for wrought aluminium and aluminium alloys, wire (for general engineering purposes)           | This standard covers the requirements of wire made from four grades of aluminium and from ten grades of aluminium alloys in various conditions (Price Rs. 5.00)   |
| 8  | IS : 744-1966 Method for determination of wool fibre diameter—projected microscope method ( <i>first revision</i> )                      | IS : 744-1955 Method for determination of mean fibre diameter for raw wool.   | This standard prescribes a method for the determination of wool fibre diameter by means of projection microscope method. The method is suitable for wool fibres in any form (Price Rs. 3.00)  |
| 9  | IS : 764-1966 Method for determination of colour fastness of textile materials to washing test 3 ( <i>first revision</i> )               | IS : 764-1956 method for determination of colour fastness of textile materials to mechanical washing (mild) $\frac{3}{2}$ | This standard prescribes a method for determination of colour fastness of all textile materials irrespective of their composition (cotton wool, silk or man-made fibre, etc) and their form (fibres, yarn or fabric) to action of soap and sodium carbonate solution at 60°- C. (Price Re 1.00) |
| 10 | IS : 943-1966 Specification for 680-l/min trailer pump for fire brigade use ( <i>first revision</i> )                                    | IS : 943-1959 Specification for 680-l/min (or 150-gal/min) trailer pump for fire brigade use                              | This standard lays down requirements regarding material, design and construction workmanship and finish and acceptance tests of 680-l/min trailer pump for fire brigade use (Price Rs. 25.50)   |
| 11 | IS : 944-1966 Specification for 1 800-l/min trailer pump for fire brigade use ( <i>first revision</i> )                                  | IS : 944-1959 Specification for 1 800-l/min (or 400-gal/min) trailer pump for fire brigade use                            | This standard lays down the requirements regarding material, design and construction, workmanship and finish, and acceptance tests of 1 800-l/min trailer pump for fire brigade use (Price Rs. 2.50).   |
| 12 | IS : 945-1966 Specification for 1 800-l/min motor fire engine ( <i>first revision</i> )  | IS : 945-1959 Specification for 1 800-l/min (or 400-gal/min) motor fire engine  | This standard lays down requirements regarding material, design and construction, workmanship and finish, accessories and equipment and acceptance test of 1 800-l/min motor fire engine (Price Rs. 4.00)   |
| 13 | IS : 974-1966 Method for determination of colour fastness of textile materials to steaming ( <i>first revision</i> )                     | IS : 974-1956 Method for determination of colour fastness of textile materials to steaming                                | This standard prescribes a method for determination of colour fastness of textile materials irrespective of their composition (cotton, silk, man-made fibres, etc) and form (fibre, yarn or fabric) to the action of steaming under atmospheric pressure (Price Re 1.00)                        |
| 14 | IS : 1300-1966 Specification for phenolic moulding materials ( <i>second revision</i> )  | IS : 1300-1963 Specification for phenolic moulding materials ( <i>revised</i> )   | This standard prescribes the requirements and the methods of sampling and test for phenolic moulding materials (Price Rs. 2.00)   |

(1)	(2)	(3)	(4)
15	IS : 1569-1966 Specification for electrical apparatus comprising resistors ( <i>revised</i> )	IS : 1565-1966 Specification for electrical apparatus comprising resistors	This standard covers four grades of electrical apparatus mainly comprising resistors, for commercial and laboratory use in association with terminals, switches, plugs, etc. namely, resistance boxes, post office boxes, wheatstone bridges, kelvin bridges and other similar apparatus. It covers only apparatus with components of accuracy between 0.02 percent and 2.00 percent (both inclusive). (Price Rs 3.00)
16	IS : 1837-1966 Specification for fanlight pivots ( <i>first revision</i> )	IS : 1837-1961 Specification for fanlight pivots	This standard lays down the requirements for fanlight pivots also known as ventilator hinges (Price Rs. 2.00)
17	*IS: 1899-1965 Specification for blow lamps ( <i>revised</i> )	IS: 1899-1961 Specification for blow lamps	This standard covers the requirements for two sizes of blow lamps burning pressurized kerosene under normal working pressure of 2.5 kgf/cm <sup>2</sup> . (Price Rs. 2.50)
18	IS : 2629-1966 Recommended practice for hot dip galvanizing of iron and steel	..	This standard recommends important guide-lines for general hot-dip galvanizing of iron and steel. (Price Rs 4.00)
19	IS : 2720 (Part XX)—1966 Methods of test for soils Part XX Determination of linear shrinkage	..	This method covers the determination of the linear shrinkage of remoulded soils. (Price Re 1.00)
20	IS : 3070 (Part II)—1966 Specification for lightning arresters for alternating current systems Part II Expulsion type lightning arresters	..	This standard is applicable to expulsion type lightning arresters designed for repeated operation to limit voltage surges on alternating current power circuits and to interrupt follow current. This applies to lightning arresters consisting of single or multiple spark gaps in series with an arcing chamber (Price Rs 8.00)
21	IS : 3268-1965 Specification for stockless anchors (for ships' use)	..	This standard specifies the nominal weights (ranging from 50 to 9 200 kg) and dimensions of various components of stockless anchors. (Price Rs 2.00)

\*NOTE.—For the purpose of the Indian Standards Institution Certification Marks Scheme this standard shall come into effect from 1 April 1967.

- 22 IS : 3353—1966 Code for inland packing of wool hosiery yarn and goods.
- 23 IS: 3469—1966 Specification for tolerances for steel drop forgings, upset forgings, press forgings and forged bars.
- 24 IS:3516—1966 Specification for cast iron pipe flanges and flanged fittings, class 9, for Petroleum industry.
- 25 IS:3551—1965 Specification for pure nitrogen (dry).
- 26 IS:3554—1966 Glossary of terms relating to electroplating.
- 27 IS:3628—1966 Specification for sidelights, tail-lights, parking lights, stop lights and direction indicators for automobile use.
- 28 IS:3630—1966 Code of practice for construction of non-load bearing gypsum block partitions.
- 29 IS:3642—1966 General requirements for surgical instruments.

This code prescribes the method for packing wool hosiery yarn (for machine-knitting and hand-knitting) and goods for inland markets. (Price Rs. 1.50).

This standard covers the requirements for tolerances for steel drop forgings upset forgings, press forgings and forged bars. (Price Rs. 4.50).

This standard covers the requirements for cast iron Pipe flanges and flanged fittings, class 9 for petroleum industry. (Price Rs. 5.50).

This standard prescribes the requirements and the methods of test for pure nitrogen (dry.) (Price Rs. 5.00).

This standard gives definitions of terms relating to electroplating. (Price Rs. 4.50).

This standard specifies requirements for sidelights, tail-lights, parking lights, stop lights and direction indicators for motor vehicles of all types (including motor cycles, moped and scooters) and describes conditions of tests for their electrical, mechanical, optical and environmental requirements. (Price Rs. 2.50).

This standard covers the design and construction of non-load bearing gypsum block partitions. (Price Rs. 2.50).

This standard covers:

- (i) the physical requirements of serration used in surgical instruments and their matching when used in instruments like the forceps;
- (ii) the requirements of various joints used in surgical instruments of the dissecting forceps type and the artery forceps type;
- (iii) the requirements of teeth used in ratchets of forceps and other instruments which require clamping;
- (iv) the profile of teeth for surgical instruments used for dissecting and other similar purposes; and
- (v) the dimensional requirements of finger loops, commonly used in surgical instruments. (Price Rs. 2.50).

(1)	(2)	(3)	(4)
30	IS:3667—1966 Specification for B-twill cloth .	..	This standard prescribes the constructional details and other particulars of B-twill cloth made of jute. (Price Rs. 2.00).
31	IS:3668—1966 Specification for liverpool twill (L-twill) cloth.	..	This standard prescribes the constructional details and other particulars of liverpool twill (L-twill) cloth made of jute. (Price Re. 1.00).
32	IS:3676—1966 Specification for pressure sensitive adhesive PVC tapes.	..	This standard prescribes the requirements and the methods of sampling and test for pressure sensitive adhesive PVC tapes which are commonly used in packaging, sealing and levelling operations. (Price Rs. 3.50).
33	IS:3677—1966 Specification for rock and slag wool mats for thermal insulation.	..	This standard prescribes the requirements and the methods of sampling and test for rock and slag wool mats used for thermal insulation, (Price Rs. 2.00).
34	IS:3685—1966 Methods of chemical analysis of brasses.	..	This standard prescribes methods for determination of copper, lead, tin, manganese, phosphorus, nickel, iron, silicon, aluminium, zinc, and arsenic in the ranges as specified in the relevant Indian Standards on brasses. (Price Rs. 5.00).
35	IS:3696 (Part I)—1966 Safety code for scaffolds and ladders Part I Scaffolds.	..	This standard lays down the safety requirements for the erection, use and dismantling of scaffolds for supporting workmen or materials for any construction work including maintenance and demolition. (Price Rs. 2.50).
36	IS:3697—1966 Boundary dimensions for tapered roller bearings.	..	This standard specified boundary dimensions and tolerances for tapered roller bearings. It does not include the internal design features though in some instances, they may affect interchangeability. (Price Rs. 2.50).
37	IS:3711—1966 Method for selection and preparation of samples and test pieces for mechanical tests for wrought steel.	..	This standard prescribes the methods for selection and preparation of samples and test pieces from wrought steel products for carrying out mechanical tests. (Price Re. 1.00).
38	IS:3715—1966 Letter symbols for semiconductor devices.	..	This standard covers the letter symbols for semiconductor devices. (Price Rs. 4.50).
39	IS:3721—1966 Specification for cheese cutting knives for table use.	..	This standard covers the requirements for cheese cutting knives for table use made of stainless steel. (Price Rs. 2.00).

40	IS: 3731-1966 Grading rules for teak squares .	..	This standard covers the requirements of various grades of teak squares based on defects. (Price Rs. 2.50).
41	IS: 3734-1966 Dimensions for worm gearing .	..	This standard lays down the major dimensions for machine cut worm gears of modules from 1 to 20 and of reduction ratios from 5 to 110. (Price Rs. 2.50).
42	IS: 3736-1966 Specification for canvas boots, rubber sole.	..	This standard prescribes the requirements, methods of sampling and test for canvas boots with rubber sole and heel, extending to ankle high. (Price Rs. 3.50).
43	IS: 3737-1966 Specification for leather safety boots for workers in heavy metal industries.	..	This specification prescribes the requirements, methods of sampling and test for leather safety boots for workers in heavy metal industries. (Price Rs. 3.50).
44	IS: 3738-1966 Specification for rubber knee boots.	..	This specification prescribes the requirements, methods of sampling and test for boots of half knee, short knee and knee height for general purposes, made of rubber used for protection of foot and legs against rain slush and knee deep waters. (Price Rs. 3.50).
45	IS: 3742-1966 Specification for pipettes, dilution for haemocytometers.	..	This standard covers the following two sizes of dilution pipettes : (a) Pipettes, dilution, for red blood corpuscles (1 in 100 dilution) known as pipettes, red cell. (b) Pipettes, dilution, for white blood corpuscles (1 in 10 dilution) known as pipettes, white cell. (Price Rs. 1.50).
46	IS: 3745-1966 Specification for yoke type valve connections for medical gas cylinders.	..	This standard covers dimensional and constructional requirements of gas cylinder valves with non-interchangeable flush type outlet connections or yoke type valve connections for medical gases and gas mixtures and also the material used in the construction of these valves. (Price Rs. 3.00).
47	IS: 3747-1966 Specification for steel for flanging and pressing.	..	This standard covers the requirements for steel plates and sheets for flanging and pressing purposes. (Price Rs. 1.00).
48	IS: 3749-1966 Specification for tool and die steels for cold work.	..	This standard covers the requirements for plain carbon and alloy tool and die steels in the form of bars, blanks, rings and other shapes for cold work, capable of being hardened and tempered. (Price Rs. 2.00).

(1)	(2)	(3)	(4)
49	IS: 3750-1966 Specification for jute corn sack cloth.	..	This standard prescribes the constructional details and other particulars of jute corn sack cloth. (Price Re. 1.00).
50	IS: 3751-1966 Specification for heavy cee cloth	..	This standard prescribes the constructional details and other particulars of heavy cee cloth made of jute. (Price Re. 1.00)
51	IS: 3757-1966 Specification for high-tensile friction grip fasteners for structural engineering purposes.	..	This standard specifies the requirements for high-tensile bolts and nuts with hardened washers for use in friction grip bolting for structural engineering purposes in the size range M12 to M 39. (Price Rs. 3.00).
52	IS: 3758-1966 Specification for hooks, aural.	..	This standard covers the requirements of aural hooks of the following patterns used in ENT work : (a) Watson William's pattern with Cerumen spud and hook, and (b) Gardiner Brown's pattern with hook and Imray's loop. (Price Rs. 1.50).
53	IS: 3759-1966 Specification for blades, skin grafting.	..	This standard covers the requirements of blades used in skin grafting knives and dermatomes. (Price Re. 1.00).
54	IS: 3760-1966 Specification for probe, aural, Jobson Horne's pattern.	..	This standard covers the requirements of aural probe, Jobson Horne's pattern used in ENT work. (Price Re. 1.00).
55	IS: 3767-1966 Specification for hook, skin, gillies pattern.	..	This standard covers the requirements of skin hooks used in plastic surgery and neurosurgery. (Price Re. 1.00).
56	IS: 3768-1966 Specification for PVC ventilation tubing (flexible ducting).	..	This standard prescribes the requirements and methods of test for flexible ductings (suitable for forced circulation systems only) made from PVC-coated fabrics, either unassembled or assembled with push through joints. (Price Rs. 3.00).
57	IS: 3769-1966 Specification for pugree cloth, cotton khadi	..	This standard prescribes constructional details and other particulars of two varieties of pugree cloth, cotton khadi. Variety No. 1 of pugree cloth is bleached and variety No. 2 is dyed. (Price Rs. 2.00)



58	IS: 3770—1966 Specification for dosuti, cotton khadi	..	This standard prescribes constructional details and other particulars of four varieties of dosuti, cotton khadi. Variety No. 1 and 3 are bleached and Variety No. 2 and 4 are dyed. (Price Rs. 2.00)
59	IS: 3771—1966 Specification for long cloth, cotton khadi, bleached	..	This standard prescribes constructional details and other particulars of long cloth, cotton khadi, bleached. (Price Rs. 1.50)
60	IS: 3772—1966 Specification for mazri, cotton khadi, scoured	..	This standard prescribes constructional details and other particulars of mazri, cotton khadi, scoured. (Price Rs. 1.50)
61	IS: 3775—1966 Specification for huckaback towels, cotton khadi, bleached	..	This standard prescribes constructional details and other particulars of three varieties of huckaback towels, cotton khadi, bleached. (Price Rs. 2.00)
62	IS: 3776—1966 Specification for bedsheets, cotton khadi, bleached	..	This standard prescribes constructional details and other particulars of bedsheets, cotton khadi, bleached. (Price Rs. 1.50)
63	IS: 3777—1966 Specification for dusters, cotton khadi, bleached	..	This standard prescribes the constructional details and other particulars of dusters, cotton khadi, bleached. (Price Rs. 1.50)
64	IS: 3778—1966 Specification for dungri cloth, cotton khadi, bleached.	..	This standard prescribes constructional details and other particulars of dungri cloth, cotton khadi, bleached. (Price Rs. 1.50)
65	IS: 3779—1966 Specification for sheeting cloth, cotton khadi, bleached	..	This standard prescribes the constructional details and other particulars of sheeting cloth, cotton khadi, bleached. (Price Rs. 1.50)
66	IS: 3780—1966 Specification for lining cloth, cotton khadi, dyed	..	This standard prescribes constructional details and other particulars of lining cloth, cotton khadi, dyed. (Price Rs. 1.50)
67	IS: 3781—1966 Specification for honeycomb towels, cotton khadi, bleached	..	This standard prescribes constructional details, and other particulars of honeycomb towels cotton khadi, bleached. (Price Rs. 2.00)
68	IS: 3782—1966 Specification for sponge cloth, cotton khadi, grey	..	This standard prescribes the constructional details and other particulars of sponge cloth, cotton khadi, grey. (Price Rs. 1.50)
69	IS: 3783—1966 Specification for blankets, superior, brick-red, wool khadi.	..	This standard prescribes the constructional details and other particulars of blankets, superior, brick-red, wool khadi. (Price Rs. 2.50)
70	IS: 3784—1966 Specification for cotton khadi, bleached, for general purposes.	..	This standard prescribes the constructional details and other particulars of cotton khadi, bleached, for general purposes. (Price Rs. 1.50)

(1)	(2)	(3)	(4)
71	IS: 3785—1966 Specification for wicket keeping gauntlets.	..	This standard covers the materials, dimensional and constructional requirements for wicket keeping gauntlets. (Price Rs. 1.50)
72	IS: 3787—1966 Specification for gag, mouth, cleft palate.	..	This standard covers the requirements of mouth gag used in plastic surgery. (Price Rs. 1.50)
73	IS: 3788—1966 Specification for specula, aural	..	This standard covers the requirements of Peter's type aural specula with its mounting and inflating bulb, Yarsley's type and Gruber's type aural specula used in ENT work. (Price Rs. 1.50).
74	IS: 3789—1966 Specification for bare cloth take-up rollers for plain cotton looms	..	This standard prescribes the requirements of bare cloth take-up rollers for plain cotton looms. (Price Rs. 1.00)
75	IS: 3799—1966 Specification for forceps, aural and nasal, crocodile action.	..	This standard specifies the requirements of aural forceps, crocodile action with serrated jaws and nasal polypi forceps with crocodile action (Price Rs. 2.00)
76	IS: 3801—1966 Specification for guavas	..	This standard prescribes the requirements for fresh guavas, <i>Psidium guajava</i> L. commonly known as AMRUD, MADHURI, PEYARA, PIYULI, JAMA, KOYYA, PERA, SEBE, PERU, or JAMPHAL. (Price Rs. 1.50)
77	IS: 3816—1966 Specification for connecting rods for sewing machines for household purposes.	..	This standard specifies the requirements for two types of connecting rods for sewing machines for household purposes. (Price Rs. 1.50).
78	IS: 3817—1966 Specification for arm shafts for sewing machines for household purposes.	..	This standard specifies the requirements for three types of arm shaft for sewing machines for household purposes. (Price Rs. 1.50)
79	IS: 3823—(Part III)—1966 Methods of evaluating static load ratings of rolling bearings Part III Thrust ball bearings	..	This standard covers the method of evaluating static load ratings for thrust ball bearings. (Price Rs. 1.00)
80	IS: 3828—1966 Specification for ventilator chains.	..	This standard lays down the requirements for ventilator chains. (Price Rs. 1.50).
81	IS: 3831—1966 Specification for dressing drums	..	This standard covers the requirements of dressing drums used for sterilizing and storing various types of dressings in hospitals. (Price Rs. 2.50)
82	IS: 3835—1966 Specification for aluminized steel core wire for aluminium conductors (ACSR)	..	This standard covers requirements for round aluminized steel core wire intended to be used for mechanical reinforcement in the manufacture of aluminium conductors (ACSR). (Price Rs. 1.50)

83	IS: 3337—1955 Specification for accessories for rigid steel conduits for electrical wiring	..	This standard specifies the material, dimensions and other requirements of accessories (other than fittings) used with rigid steel conduits for electric wiring purposes conforming to IS: 1953—1964. (Price Rs. 3.00)
84	IS: 3839—1966 Specification for food yeast	..	This standard prescribes the requirements and the methods of test for food yeast (Price Rs. 6.00)
85	IS: 3848—1966 Method for end quench test for hardenability of steel.	..	This standard prescribes the method for determining the hardenability of steel by end quench of Jominy test. (Price Rs. 3.00)
86	IS: 3855—1966 Specification for rectangular and square enamelled copper conductors.	..	This standard covers the requirements of enamelled rectangular and square conductors ranging in thickness from 0.8 to 10 mm and in width up to 25 mm of three grades (depending on thickness of enamel) of covering, namely, fine (F), medium (M) and thick (T). (Price Rs. 3.50)
87	IS: 3856—1966 Method for testing flax fabrics for resistance to attack by micro-organisms.	..	This standard prescribes methods for evaluating flax fabrics for resistance to attack by micro-organisms. (Price Rs. 2.50)
88	IS: 3857—1966 Method for determination of colour fastness of textile materials to acid felting mild	..	This standard prescribes a method for determination of colour fastness of textile materials to the action of dilute hot mineral acids, as used in mild felting conditions (Price Re. 1.00)
89	IS: 3858—1966 Specification for benzyl acetate.	..	This standard prescribes the requirements and the methods of sampling and test for benzyl acetate used as a perfumery material. (Price Re 1.00)
90	IS: 3861—1966 Method of measurement of areas and cubical contents in buildings	..	This standard covers the method of measurement of areas and cubical contents of buildings. (Price Re 1.00)
91	IS: 3863—1955 Specification for feed lifting rock shaft for sewing machines for household purposes.	..	This standard specifies the requirements for two types of feed lifting rock shafts for sewing machines for household purposes. (Price (Rs. 1.50)
92	IS: 3880—1966 Specification for canned mango pulp	..	This standard prescribes the requirements and the methods of test for mango pulp. (Price Rs. 2.50)

(1)	(2)	(3)	(4)
93 IS: 3883—1966 Specification for canned tomato puree	..	This standard prescribes the requirements and the methods of test for canned tomato puree. (Price Rs. 2.50)	

Copies of these Indian Standards are available, for sale, with the Indian Standards Institution, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-1 and also its branch offices at (i) Bombay Mutual Terrace, First Floor, 534 Sardar Vallabhbhai Patel Road, Bombay-7, (ii) Third and Fourth Floors, 5 Chowringhee Approach, Calcutta-13, (iii) Second Floor, Sathyamurthi Bhavan, 54 General Patters Road, Madras-2 and (iv) 117/418-B Sarvodaya Nagar, Kanpur.

[No. MD/13:2]

S.O. 914.—The Certification Marks Licences, details of which are given hereafter, have lapsed or their renewal deferred

Serial No.	Licence No. and Date	Licensee's Name and Address	Article/Process and the Relevant IS : No.	S.O. Number and Date of the Gazette Notifying Grant of Licence	Remarks
1	CM/L-35 4-11-1957	The National Insulated Cable Co. of India Ltd., Shamnagar, 24-Parganas (W. Bengal).	Bare annealed high conductivity copper conductors for insulated cables —IS:2982-1965.	S.R.O. 3724 23-11-1957	Lapsed after 15-11-1966.
2	CM/L-45 20-1-1958	B.S. & Co., 6, Nabin Chandra Das Lane, Baranagar, Calcutta-36 (Plywood Mill No. 1)	Tea-chest plywood panels—IS:10-1964.	S.O. 13, 15-2-1958	Deferred after 31-1-1967.
3	CM/L-58 20-1-1958	Assam-Bengal Veneer Industries Pvt. Ltd., 9, Olive Row, Calcutta-1.	Tea-chest plywood panels—IS:10-1964.	S.O. 13, 15-2-1958	Lapsed after 31-1-1967.
4	CM/L-233 18-10-1960	Great Eastern Cutlery Works, 20, Strand Road, Calcutta-1.	Pruning knives, hooked and curved—IS:619-1951.	S.O. 2659, 5-11-1960	Deferred after 15-1-1967.
5	CM/L-209 30-1-1961	Flintrock Products Pvt. Ltd., Belvedere Road, Mazagon, Bombay.	DDT water dispersible powder concentrates—IS:565-1961.	S.O. 340, 11-2-1961	Deferred after 31-1-1967.
6	CM/L-838 23-11-1964	Associated Industrial Corpn., 39, Factory Area, Fazalganj, Kanpur.	18-litre square tins—IS:916-1958.	S.O. 79, 2-1-1965	Lapsed after 30-11-1966.
7	CM/L-902 25-1-1965	Yawalkar Insecticides & Chemicals, 20 Industrial Estate, Kamptee Road, Nagpur-1.	Formulations based on phenyl mercury acetate—IS:2357-1963.	S.O. 667, 27-2-1965	Deferred after 31-1-1967.
8	CM/L-1192 7-1-1966	The Cawnpore Oil & Soap Mills Pvt. Ltd., 84/6, Factory Area, Kanpur.	Mutton tallow, Grades 1 & 2—IS:887-1960.	S.O. 525, 19-2-1966	Lapsed after 15-1-1967.

[No. M.D./33:16/C.]

**S.O. 915.**—In licence No. CM/L-679 dated 29th May 1964 held by M/s Optimohar Industries Pvt. Ltd., Bombay, the details of which are published under S.O. 2247 in the Gazette of India, Part II, Section 3, Sub-Section (ii) dated 30th July 1966 the list of articles has been revised as under with effect from 27th February 1967:

- (a) Oil pressure stoves Types A1, A2, B2 and B3.
- (b) Roarer and silencer type burners for oil pressure stoves.  
Brands. Gold Mohar, Optimohar and Vinstar.

[No. MD/55:679.]

New Delhi, the 8th March 1967

**S.O. 916.**—In pursuance of regulation 4 of the Indian Standards Institution (Certification Marks) Regulations, 1955, the Indian Standards Institution hereby notifies that amendment(s) to the Indian Standard(s), given in the Schedule hereto annexed, have been issued under the powers conferred by sub-regulation (1) of regulation 3 of the said regulations.

THE SCHEDULE

Sl. No.	No. and title of the Indian Standard amended	No. and Date of Gazette Notification in which the establishment of the Indian Standard was notified	No. and Date of the Amendment	Brief particulars of the Amendment	Date from which the Amendment shall have effect
(1)	(2)	(3)	(4)	(5)	(6)
1.	IS:335-1963 Specification for insulating oil for transformers and switchgear ( <i>revised</i> )	S.O. 2297 dated 4 July 1964	No. 2 January 1967	Page 6, clause 5.2—Add the following new clause after 5.2:  '5.3 Oil may be delivered in tank cars/ wagons which are suitably sealed to exclude moisture.'	15 March 1967
2.	IS:395-1962 Specification for lead-acid storage batteries (light duty) for motor vehicles ( <i>second revision</i> )	S.O. 2370 dated 24 August 1963	No. 3 November 1966	(i) Clause 0.9 has been deleted. (ii) Clauses 2.1, 3.5, 6.3.5 and 6.5.2 have been substituted by new ones (iii) Clause 6.9.2 has been amended	
3.	IS:548-1964 Methods of sampling and test for oils and fats ( <i>revised</i> )	S. O. 83 dated 2 January 1965	No. 1 November 1966	(i) Clauses 3.4.2.1, 14.1.7, 18.3.2, 20.5.2, 20.7.3, 20.8.2 and 20.10.2 have been amended (ii) Fig. 6 has been substituted by a new one (iii) New items 21 and 22 have been added	
4.	IS:693-1965 Specification for varnished cambric insulated cables ( <i>revised</i> )	S.O. 2037 dated 9-7-1966	No. 1 January 1967	Page 15, clause 11—Delete this clause and re-number the subsequent clauses accordingly.	
5.	IS:766-1956 Method for determination of colour fastness of textile materials to rubbing.	S.R.O. 1152 dated 19-5-1956	No. 1 January 1967	Page 3, clause 3.3—Delete the clause	

(1)	(2)	(3)	(4)	(5)	(6)
6.	IS: 841-1957 Specification for hand hammers	S.O. 1349 dated 12-7-1958	No. 2 February 1967	Page 7, Table III, last row under dimension 'A'—Substitute the following for the existing entries:	15 March 1967
				<div style="text-align: center;"> <math display="block">\overbrace{\text{mm} \quad \text{(in.)}}^{\text{A}}</math> <math display="block">232 \quad (9 \frac{1}{8})</math> </div>	
7.	IS: 959-1966 Specification for electric soldering irons (revised)	S.O. 2419 dated 13-8-1966	No. 1 October 1966	(i) Page 10, clause A-3·1, line 5—Substitute 'col 5' for 'col 6' (ii) Page 11, Table 2, col. 2, last row—Substitute '25' for '50'	Immediate effect
8.	IS: 1005-1957 Specification for edible maize starch (corn flour)	S.R.O. 3809 dated 30-11-1957	No. 2 November 1966	(i) Clause 0·5 has been amended (ii) Clause 4·4, Appendix A, clauses D-1·1 and D-2·1 have been substituted by new ones (iii) Clause number under the caption of Table I has been changed as '4·6' (iv) Appendix E has been deleted and the subsequent ones redesignated accordingly (v) The existing Appendix J has been substituted by a new Appendix H (vi) A new clause 4·5 has been added and the existing clause '4·5' renumbered as '4·6'	
9.	IS: 1277-1958 Specification for gear lubricant, regular	S.O. 2654 dated 27-12-1958	No. 1 December 1966	(i) Causes 0·3 and 0·3·1 have been deleted and the subsequent ones renumbered accordingly (ii) Clauses 2·1, 3·2·1, Table I and A-2·1 have been substituted by new ones (iii) Clauses A-2·1·1 and A-3·2 have been amended	Immediate effect
10.	IS: 1459-1959 Specification for kerosines	S.O. 613 dated 12 March 1960	No. 2 January 1967	Page 4, Table I (Page 5 of the Reprint), col. 5, against Sl. No. (i)—Substitute '35°C' for '38°C'	
11.	IS: 2003-1962 Specification for malted milk food containing cocoa powder	S.O. 2698 dated 1 September 1962	No. 2 January 1967	Malted skimmed milk with cocoa has been included in the Standard	



12	IS:2141-1962 Specification for galvanized stay strand	S.O. 242 dated 26 January 1963	No. 1 January 1967	Clause 5.4 has been amended.
13	IS:2199-1962 Test chart for radial drilling machines	S.O. 1421 dated 25 May 1963	No. 1 January 1967	Sl. No. 1 at page 4 and Sl. No. 3 at page 5 have been amended.
14	IS:2208-1962 Specification for HRC cartridge fuse-links up to 650 volts	S.O. 1682 dated 22 June 1963	No. 1 November 1966	Page 14, clause 6.1.1, line 6—substitute 'temperature-rise' for 'temperature'.
15	IS:2296-1963 tolerance limits for inland surface waters subject to pollution	S.O. 1421 dated 25 June 1963	No. 1 December 1966	Limits for alpha emitters and beta emitters have been added in all the three tables in the standard. Besides, the three Indian Standards covering methods of sampling and methods of test for water (IS:1620-1961—IS: 1621-1963 and IS: 1631-1960) have been superseded by IS:3025-1964; consequently references to methods of sampling and methods of test have been suitably modified.
16	IS:2409-1963 Specification for calcium ammonium nitrate	S.O. 2647 dated 14 September 1963	No. 2 December 1966	Clauses 4.1 and 4.2 have been substituted by new ones.
17	IS:2581-1963 Specification for round strand galvanized steel wire ropes for shipping purposes	S.O. 1373 dated 18 April 1964	No. 1 November 1966	Clause 8.3 has been amended.
18	IS:2720 (Part IV)-1965 Methods of test for soils Part IV grain size analysis	S.O. 2652 dated 27 August 1966	No. 1 December 1966	Page 28, caption of Fig. 7—Substitute the following for the existing caption:  <b>'Fig. 7 NOMOGRAPHIC CHART FOR SOLVING STOKES' LAW'</b> Page 5, Fig. 1 (a) Section CC—Substitute '1.6' for '16' and '1.6R' for '16R' (b) Section BB—Substitute '1.6' for '16' and '3.2R' for '32R' (i) Table 1 has been amended and new matter added in clause 2.1.2.1 (ii) A new clause 2.1.2.4, has been added and the existing one re-numbered as '2.1.2.5' Clause B-1.1 has been amended
19	IS:2720 (Part V)-1965 Methods of test for soils Part V determination of liquid and plastic limits	S.O. 664 dated 5 March 1966	No. 1 December 1966	
20	IS:2736-1964 Specification for motor gasoline, 83 octane	S.O. 4120 dated 5 December 1964	No. 1 January 1967	
21	IS:2974 (Part D)-1964 Code of practice for design and construction of machine foundations Part I Foundations for reciprocating type machines	S.O. 2134 dated 3 July 1965	No. 1 January 1967	

15 March  
1967

(1)	(2)	(3)	(4)	(5)	(6)
22	IS:3109-1965 Specification for electrically welded steel chain, short link and pitched or calibrated, grade 40, for lifting purposes	S.O. 281 dated 22 January 1966	No. 1 February 1967	Clause 0.2 has been substituted by a new one	} 15 March 1967
23	IS:3121-1965 Specification for rigging screws and stretching screws	S.O. 2246 dated 30 July 1966	No. 1 November 1966	(i) Clauses 1.1, 2.1.1, 2.1.1.1 and 6.2 have been substituted by new ones (ii) Foot-note at page 8 has been substituted by a new one	
24	IS:3156 (Part I)-1965 Specification for voltage transformers Part I General requirements	S.O. 3065 dated 15 October 1966	No. 1 January 1967	Clause 4.3—Substitute the following for the existing clause :  '4.3 Rated Outputs—The rated output expressed in volt-amperes shall be one of the values given below : 10, 25, 50, 75, 100, 150, 200 and 500'	
25	IS:3613-1966 Acceptance tests for wire flux combinations for submerged-arc welding	S.O. 241 dated 21 January 1967	No. 1 January 1967	Table 1 has been amended.	

Copies of these amendment slips are available, free of cost, with the Indian Standards Institution, Manak Bhavan, 9 Bahadur Shah Zafar Marg, New Delhi-1 and also its branch offices at (i) Bombay Mutual Terrace, First Floor, 534 Sardar Vallabhbhai Patel Road, Bombay-7 (ii) Third and Fourth Floors, 5 Chowringhee Approach Calcutta-13 (iii) Second Floor, Sathyamurthi Bhavan, 54 General Patters Road, Madras-2 and (iv) 117/418B Sarvodaya Nagar, Kanpur.

[No. MD/13:5]  
S. K. SEN,  
Deputy Director General.